



2024 VOLUNTARY ALL-SOURCE RFP

for CETA-Compliant Energy and Capacity Resources

July 1, 2024

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SECTION 1. INTRODUCTION

1. Introduction

This Voluntary All-Source Request for Proposals (the “2024 All-Source RFP”) seeks bids from qualified parties (“Bidders”) to supply

- up to 2.3 million annual megawatt-hours (MWh) by 2030 from nonemitting electric generation or renewable resources that comply with the requirements of Washington State’s Clean Energy Transformation Act (CETA)¹ (collectively, “CETA-Compliant Energy”) and
- up to 1,755 MW of summer and 1,573 MW of winter peak capacity resources in 2029 to Puget Sound Energy, Inc. (PSE) (collectively “Capacity Resources”).

This is an All-Source RFP, meaning that PSE will consider any electric resource or energy storage resource that can meet all or part of PSE’s resource need, consistent with the requirements described herein. The 2024 All-Source RFP will be available on PSE’s website at the following link: <http://www.pse.com/RFP>.

PSE issued a targeted Distributed Solar and Storage Resources RFP (the “2024 DSS RFP”)² on May 20, 2024. The 2024 DSS RFP provides guidance regarding PSE’s distributed solar and storage resource requirements. PSE intends to issue a Demand Response Request for Information in late 2024 (the “2024 DR RFI”) and a Demand Response Request for Proposals in 2025 (“2025 DR RFP”). Although proposals for distributed energy resources (DER) and demand response (DR) resources are welcome to participate in this 2024 All-Source RFP, PSE encourages Bidders with demand response proposals to bid into the 2025 DR RFP.

PSE’s resource procurement process will be accessible and fair for all Bidders. PSE encourages all qualifying Bidders to participate in the 2024 All-Source RFP; these include Bidders representing minority-, women-, disabled-, and veteran-owned businesses. PSE further encourages Bidders to support supplier diversity through inclusive, competitive procurement processes.

The 2024 All-Source RFP process may or may not result in one or more transactions by PSE. PSE has no obligation to enter definitive agreements with any Bidder to this 2024 All-Source RFP and may terminate or modify the 2024 All-Source RFP at any time without liability or obligation to any Bidder.

¹ See Chapter 19.405 RCW, available at <https://app.leg.wa.gov/rcw/default.aspx?cite=19.405>.

² See Puget Sound Energy, Inc., *2024 Distributed Solar and Storage RFP* (2024), available at <https://www.pse.com/en/pages/energy-supply/acquiring-energy/2024-Distributed-Solar-and-Storage-RFP>.

SECTION 2. RESOURCE NEEDS

2. Resource Needs

PSE's integrated system planning analysis, which evaluates and establishes the Capacity Resource and CETA-Compliant Energy needs, guides PSE's electric resource acquisition process consistent with WAC 480-100-620.³ The 2023 Electric Progress Report on the 2021 Integrated Resource Plan (the "2023 EPR") includes an assessment of PSE's resource needs and describes the metrics and methodologies used to identify those needs. PSE filed the 2023 EPR on March 31, 2023. Please see the following link for the 2023 EPR: <http://www.pse.com/irp>.⁴

The 2023 EPR documents a need for additional resources to help meet PSE's peak capacity needs and CETA targets. PSE's analysis of proposals will focus on each bid's ability to meet all or part of the capacity need or CETA targets at the lowest reasonable cost to customers, considering risk. PSE will evaluate any commercially viable electric generation, storage, or other resource type or technology, provided that the resource complies with all applicable laws and regulations and meets the minimum qualification requirements described in Exhibit B of this 2024 All-Source RFP.

PSE may revise the total Capacity Resource and CETA-Compliant Energy needs identified in this 2024 All-Source RFP to reflect the best available information at the time resource decisions are made. Such adjustments may include accounting for updates to PSE's load forecast and new resource additions, including resources acquired through the 2024 DSS RFP and the upcoming 2025 DR RFP.

PSE's CETA-Compliant Energy Needs

CETA requires that all retail electric sales in Washington be greenhouse gas neutral by 2030, and 100 percent from CETA-Compliant Energy by 2045. Although hydro resources and nonemitting electric generation resources do not qualify as renewable resources under the RPS, they may count under CETA's requirements. For a full definition of CETA-Compliant Energy,

³ PSE has a legal obligation to meet the requirements of the Energy Independence Act, chapter 19.285 RCW, and the Clean Energy Transformation Act, chapter 19.405 RCW. The Energy Independence Act, also known as Washington state's renewable portfolio standards, requires PSE to acquire qualifying eligible renewable resources and/or renewable energy credits to meet 15 percent of its load. CETA sets statewide policy goals for the elimination of coal-fired resources by December 31, 2025, 80 percent carbon free generation and overall carbon neutral electricity by 2030, and 100 percent carbon free electricity by 2045.

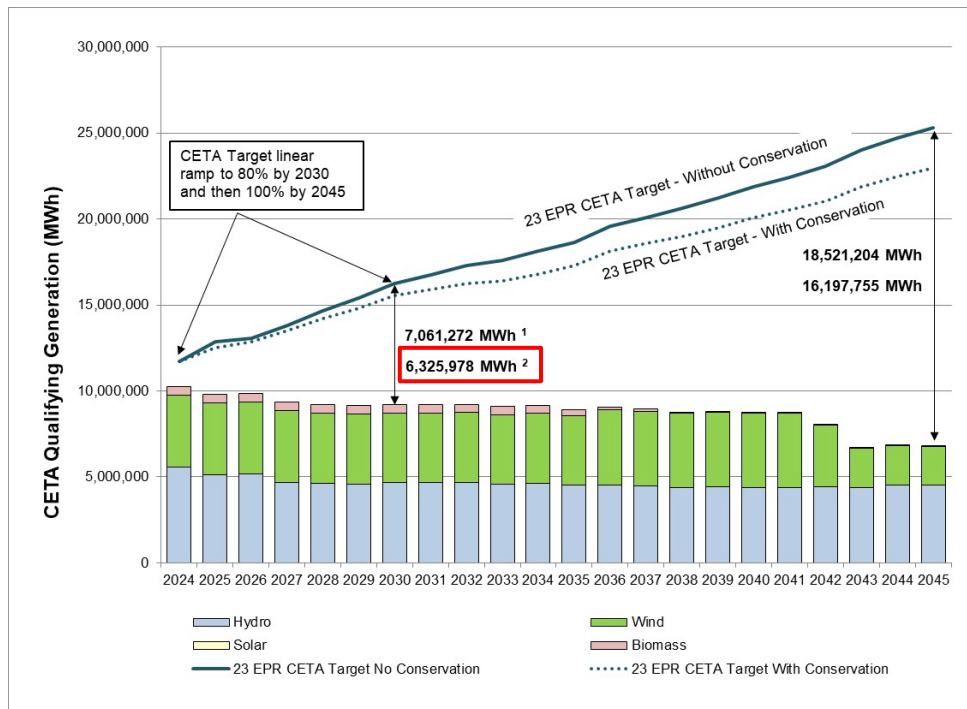
⁴ See also WUTC, UTC Case Docket Document Sets, Docket UE-200304, available at <https://www.utc.wa.gov/es/casedocket/2020/200304/docsets>.

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please see the CETA definitions of the terms “nonemitting electric generation”⁵ and “renewable resource.”⁶

The 2023 EPR projects that PSE will need to add over six million MWh of CETA-Compliant Energy to meet the CETA target for 2030.

Figure 1. *CETA-Compliant Energy Needs*



[1] Source: 2023 Electric Progress Report

[2] Source: Presentation published for February 27, 2024 IRP webinar

After accounting for projects executed or in progress since the 2023 EPR was issued, PSE projects that it will need approximately 2.3 million annual MWh of additional CETA-Compliant Energy to meet its CETA target in 2030.

⁵ See RCW 19.405.020(28).

⁶ See RCW 19.405.020(34).

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Table 1. *CETA-Compliant Energy Needs Net of Executed and In Progress Projects*

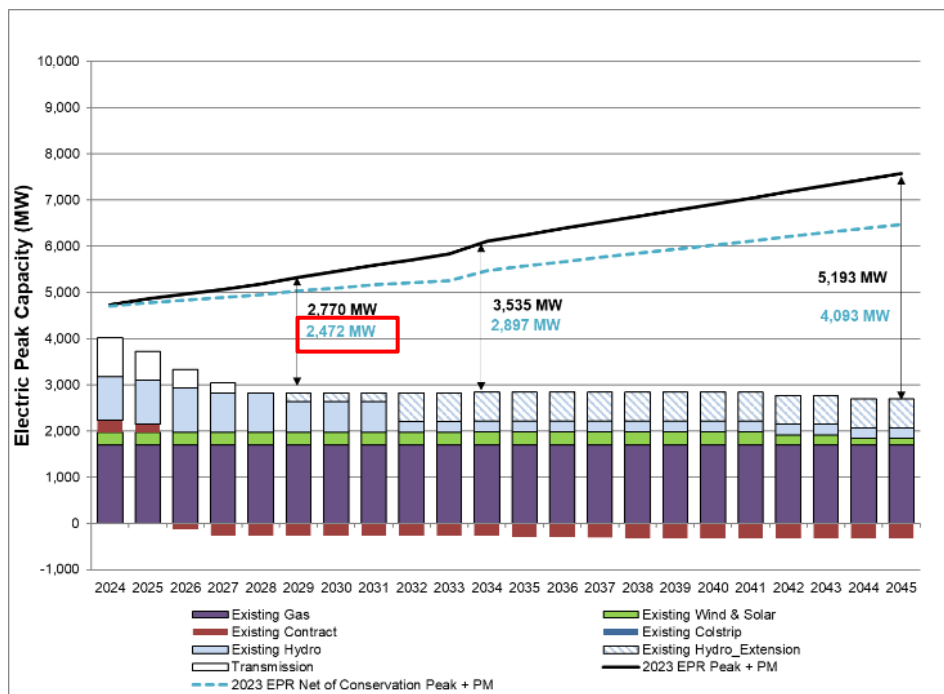
Line	CETA need in 2030 (net of executed and In progress projects)	Energy (MWh)
1	2023 EPR CETA need after conservation	6,325,978
2	Projects executed or in progress (as of 6/28/24)	3,979,062
3	CETA energy need in 2030	2,346,916

PSE will evaluate all eligible resource types based on their ability to help meet both the Capacity Resource and CETA-Compliant Energy needs. The 2024 All-Source RFP does not include resource-specific targets.

PSE's Capacity Resource Needs

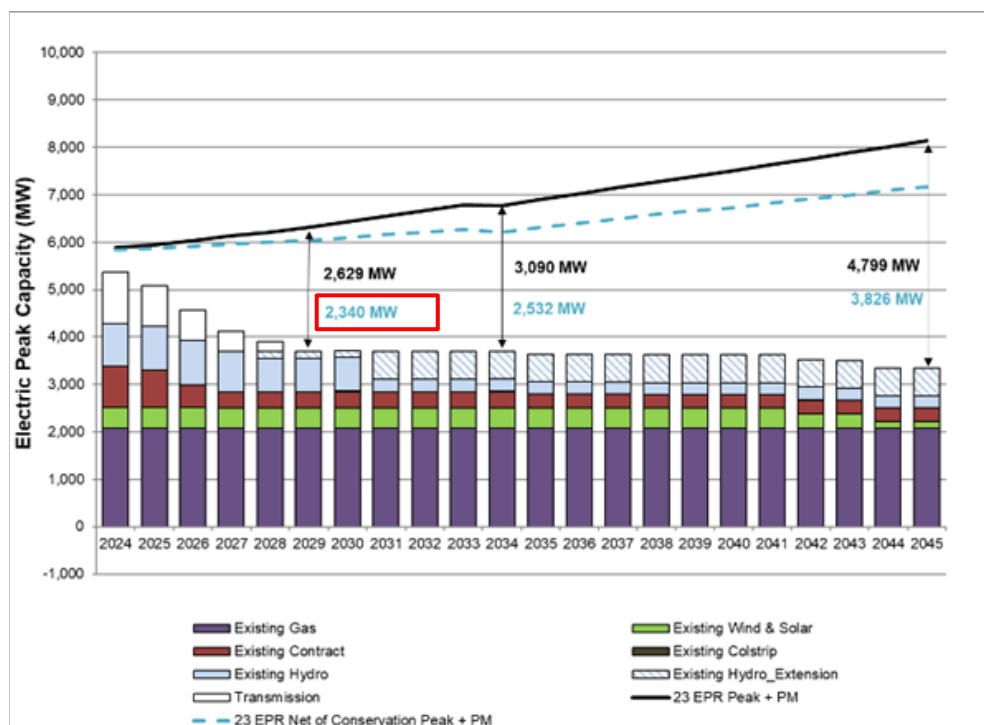
The 2023 EPR projects a need for 2,472 MW (in summer) and 2,340 MW (in winter) of new Capacity Resources in 2029. This forecast reflects (i) PSE's F2022 normal peak load forecast; (ii) removal of PSE's interests in Colstrip Units 3 and 4 from PSE's portfolio after 2025; (iii) the expiration of the Power Purchase Agreement (PPA) with the TransAlta Centralia Generation Station, and (iv) the addition of intermediate-term hydro contracts.

Figure 2. *Summer Capacity Resource Needs Forecast*



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Figure 3. *Winter Capacity Resource Needs Forecast*



After accounting for projects executed or in progress since the 2023 RFP was issued, PSE projects it will need approximately 1,755 MW of additional summer Capacity Resources and approximately 1,573 MW of additional winter Capacity Resources to meet its winter peak need in 2029.

Table 2. *Summer and Winter Capacity Resource Needs Net of Executed and In Progress Projects*

Line		Summer Capacity (MW)	Winter Capacity (MW)
	Capacity need in 2029 (net of executed and In progress projects)		
1	2023 EPR peak need after conservation	2,472	2,340
2	Projects executed or in progress (as of 6/28/24)	717	767
3	Peak capacity need in 2029	1,755	1,573

Although resource need is generally expressed as a summer peak (c.f. Figure 2) and a winter peak (c.f. Figure 3), PSE also has seasonal and daily capacity needs. PSE's analysis of each proposal's effective load carrying capability (ELCC) will favor resources with production shapes that align well with PSE's load or that offer the ability to dispatch to meet load. Proposals that can help meet seasonal (Nov.-Feb., Dec.-Feb., or Nov.-Mar.), heavy-load-hour (hour ending (HE) 0700-2200), and super peak (HE 0800-1000 and 1700-2100, Nov.-Feb.) needs, while reducing off-peak

SECTION 2. RESOURCE NEEDS

surpluses will benefit in PSE's analysis. Figure 4 illustrates PSE's typical monthly demand, and Figure 5 illustrates PSE's average and peak day hourly load shapes in summer and winter.

Figure 4. *PSE's Typical Monthly Demand*

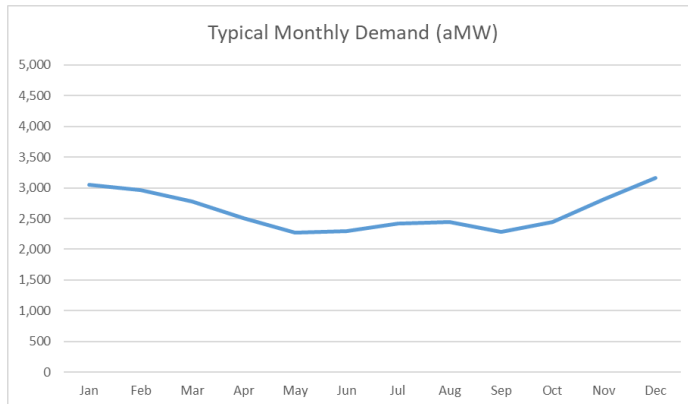
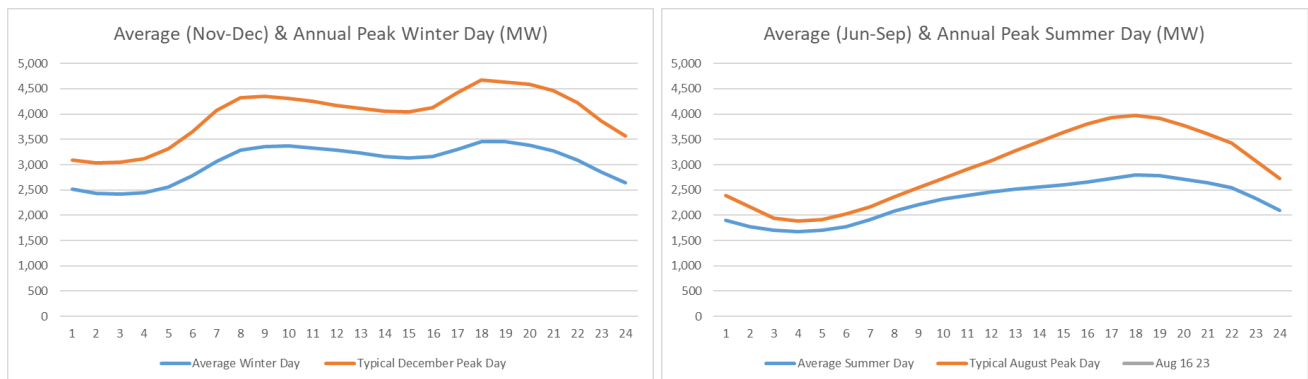


Figure 5. *PSE's Seasonal Average and Peak Day Hourly Shapes*



Evaluating the Capacity Contribution of Resources

PSE's analysis expresses a resource's contribution to capacity as its ELCC. ELCC is used to compare the relative peak capacity contribution of resources with different operating characteristics by measuring the contribution of a resource to the fulfillment of a utility's coincident peak capacity need. ELCC values depend highly on the load characteristics and mix of resources in a utility's portfolio, and they are unique to each utility.

SECTION 2. RESOURCE NEEDS

For information about PSE’s approach to calculating ELCCs, please see the [2023 Electric Progress Report](#),⁷ Chapter 7 and Appendix L. PSE’s integrated system planning work is currently underway. PSE presented its draft resource ELCC assumptions at a recent Resource Planning Advisory Group (RPAG) meeting. Interested parties can find a copy of this presentation on PSE’s [Get Involved](#) website.⁸ See the March 12, 2024 RPAG meeting presentation, slides 23-26.

⁷ See Puget Sound Energy, Inc., *2023 Electric Progress Report*, <https://www.pse.com/en/IRP/Past-IRPs/2023-IRP>.

⁸ See Puget Sound Energy, Inc., *Get Involved: Resource Planning Advisory Group*, <https://www.pse.com/en/IRP/Get-involved>.

SECTION 3. ELIGIBLE RESOURCES**3. Eligible Resources**

To qualify for consideration, a proposal's bidding entity must demonstrate that it currently owns or has legally binding rights to develop or market the proposed project(s). The Bidder must also demonstrate an ability to meet all Proposal Requirements, including all minimum qualifying criteria, found in Exhibit B (Proposal Requirements).

Resource Characteristics

PSE will consider PPAs, ownership, or alternative agreements for CETA-Compliant Energy, Capacity Resources, storage resources, and demand-side resources using any commercially proven technology.⁹ Bidders must demonstrate that their proposed projects have achievable plans to secure long-term firm transmission at the specific POD by the project commercial operation date (COD). PSE prefers deliveries that are fully integrated, balanced, and delivered on a firm hourly schedule.

PSE has a need for resources to help meet both the Capacity Resource need described in Section 2 and the CETA-Compliant Energy need to achieve carbon neutrality by 2030. Resources that are dispatchable, shaped to meet peak needs, or whose generation profiles align well with PSE's load shape (c.f. Section 2), will perform best in PSE's analyses. PSE will consider the seasonality of the generation, the ability to control the project's output to match PSE's resource needs (up to and including real-time dispatch and displacement), and contractual mechanisms to shape project output to need. PSE prefers CETA-Compliant Energy that can also meet Capacity Resource needs. Proposals must be consistent with the requirements described in Exhibit B (Proposal Requirements) and Exhibit B-1 (Proposal Form) to this 2024 All-Source RFP. PSE encourages qualified Bidders proposing projects 5 MW or larger to participate in the 2024 All-Source RFP.¹⁰

⁹ PSE has sufficient renewable resources to meet Washington state's renewable portfolio standard and is not seeking REC-only products in this 2024 All-Source RFP.

¹⁰ QFs with nameplate capacities of less than 5 MW may sell power to PSE pursuant to electric tariff rate Schedule 91. Please see Puget Sound Energy, Inc., *Distributed Renewables*, <https://www.pse.com/en/green-options/Renewable-Energy-Programs/distributed-renewables>, for more information regarding Schedule 91.

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Table 3. *Eligible Resources*

Resource	Description (including but not limited to)	Contract Type
CETA-compliant energy	All commercially proven nonemitting electric generation and renewable resources	PPA and ownership
Baseload generation	Unit contingent, shaped, or blocked	PPA and ownership
Capacity products	Call options, dispatchable, storage	Tolling, PPA and Ownership
Temporal exchanges	Seasonal, monthly, weekly, daily	PPA
Hybrid resources	Renewable + storage	PPA and Ownership
Demand-side resources	Demand response, distributed energy resources	PPA
Other resource not specified above	Any commercially available resources	

Energy Delivery

This 2024 All-Source RFP seeks incremental CETA-Compliant Energy and Capacity Resources to meet the projected CETA-Compliant Energy and Capacity Resource needs. PSE reviewed its transmission contracts and determined that, for the 2024 All-Source RFP, it is operationally feasible to accommodate deliveries of third-party generation to the specific points of delivery (POD) listed in Exhibit F. PSE will only consider resources that provide firm transmission service¹¹ to PSE's balancing authority area (BAA) or to a POD identified in Exhibit F. Firm transmission from off-system resources means long-term firm transmission service to either the PSE BAA or a POD identified in Exhibit F. PSE will only assign a capacity value to resources that meet one of these criteria:

¹¹ As used in this 2024 All-Source RFP, firm transmission refers to NERC Transmission Service Reservation Priority 6 or 7-F (Firm Point-to-Point Transmission Service), including Conditional Firm Point-to-Point Transmission Service.

SECTION 3. ELIGIBLE RESOURCES

- Are in the PSE BAA (at PSE's load center, on PSEI System west of the Cascade Mountains). As a Network Integration Transmission Service Customer of PSE Transmission, PSE Merchant can secure Network Integration Transmission Service (NITS) to deliver projects within the PSE BAA to load.¹²
- Meets the minimum requirements defined in Exhibit B, Minimum Qualifying Criteria, to secure long-term firm transmission that will deliver to the PSE BAA at BPAT.PSEI prior to the project's commercial COD.¹³
- Are consistent with the PODs identified in Exhibit F, Table 1.

Resources that meet both PSE's CETA-Compliant Energy and Capacity Resource needs will typically receive more positive evaluations than resources that only meet one of these needs.

A Bidder proposing to interconnect a resource with the PSE transmission system must demonstrate that it has included all incremental costs to interconnect the resource to PSE's transmission system. The Bidder must request Network Resource Interconnection Service (NRIS) from the PSE Transmission Provider, subject to the terms and conditions of PSE's Open Access Transmission Tariff (OATT).¹⁴ NRIS enables eligibility for Network Integration Transmission Service, which PSE Merchant could secure as a network customer of PSE. Energy storage proposals must demonstrate that the applicable transmission provider has studied the energy storage proposals as both a resource and a load, and the energy storage proposal must specify its assumed states of charge and discharge.

Bidders with projects certified as qualified facilities (QFs) with the Federal Energy Regulatory Commission (FERC) should request interconnection service under PSE's state processes. Bidders seeking to interconnect QFs to PSE's distribution system should use the Schedule 152

¹² Does not include the portion of PSEI's BAA that is east of the Cascades.

¹³ BPAT.PSEI is a transmission scheduling point in BPA Transmission Service's (BPAT) Open Access Same-time Information System (OASIS). It represents 24 separate interconnections between the balancing authority areas of PSE (PSEI) and BPAT.

¹⁴ See Puget Sound Energy, Inc., *Open Access Transmission Tariff* (Sept. 8, 2023), available at http://www.oasis.oati.com/woa/docs/PSEI/PSEIdocs/PSE_Current_OATT_Effective_09.08.2023.pdf.

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interconnection process,¹⁵ and Bidders seeking to interconnect QFs to PSE's transmission system should use the Schedule 153 interconnection process.¹⁶

Exhibit F identifies PSE transmission contract rights that PSE can use to deliver CETA-Compliant Energy and Capacity Resources proposed in this 2024 All-Source RFP. In addition to the PODs identified in Exhibit F, Bidders may deliver to the PSE BAA west of the Cascade Mountains (PSEI.SYSTEM) or BPAT.PSEI. All proposals must include the cost of delivery, transmission, and integration to the PSE BAA or a POD listed in Exhibit F. PSE will neither accept delivery at other PODs nor allow for the use of existing PSE-owned transmission capacity other than the transmission capacity offered in Exhibit F.

Bidders can find the latest transmission rates of (i) the PSE Transmission Provider on the PSE OASIS website¹⁷ and (ii) the Bonneville Power Administration (BPA) Transmission Provider on the BPA website.¹⁸

Please direct questions about the OATT processes of PSE and BPA to the relevant Transmission Provider.

- Contact information for the PSE Transmission Provider is on the home page of PSE's OASIS website at <http://www.oatioasis.com/psei/>.
- Contact information for the BPA Transmission Provider is at <http://www.bpa.gov/Contact/Pages/Contact><https://www.bpa.gov/about/who-we-are/transmission-contact-information>.

Operational Status

This 2024 All-Source RFP seeks bids for a combination of CETA-Compliant Energy and Capacity Resources that provide approximately 2.3 million MWh per year of energy that complies with the requirements of CETA, and approximately 1,755 MW of summer and 1,573 MW of winter peak capacity contribution. PSE will accept project proposals for new or existing resources with CODs of January 1, 2030, or earlier. Projects with CODs after January 1, 2030, will not meet the

¹⁵ See Puget Sound Energy, Inc., *Distributed Renewables*, <https://www.pse.com/en/green-options/Renewable-Energy-Programs/distributed-renewables>.

¹⁶ See Puget Sound Energy, Inc., *Qualifying Facility Transmission Interconnections*, <https://www.pse.com/en/green-options/Renewable-Energy-Programs/Qualifying-Facility-Transmission-Interconnections>.

¹⁷ See Puget Sound Energy, Inc., *PSEI Current OATT Prices 2024_6_3* (June 3, 2024), available at <http://www.oasis.oati.com/woa/docs/PSEI/PSEIdocs/PSEI Current OATT Prices 2024 6 3.xls>.

¹⁸ See Bonneville Power Administration, *Transmission Rates* (May 20, 2024), available at <https://www.bpa.gov/energy-and-services/rate-and-tariff-proceedings/transmission-rates>.

SECTION 3. ELIGIBLE RESOURCES

minimum qualifying criteria for this 2024 All-Source RFP. Although PSE considers long-lead resources with CODs after January 1, 2030, outside the scope of this 2024 All-Source RFP, developers of such long-lead resources are welcome to submit bilateral offers for consideration at any time; provided, however, that PSE will not consider such bilateral offers of long-lead resources within the timeframes set forth in the schedule presented in Section 4 of this 2024 All-Source RFP. All resources must meet all applicable laws and the minimum requirements defined in Exhibit B (Proposal Requirements) and Exhibit B-1 (Proposal Form) of this 2024 All-Source RFP.

Storage Resources

PSE recognizes that energy storage encompasses a wide range of technologies.¹⁹ PSE will evaluate all proposed energy storage technologies based on lowest reasonable cost and best fit, consistent with the most recent IRP analysis and based on the evaluation process described in Exhibit A and Exhibit C to this 2024 All-Source RFP.²⁰

The PSE Transmission Provider has prepared a report to identify potentially favorable locations within the PSE BAA west of the Cascade Mountains for siting energy storage. The report should help Bidders gauge the risks of incurring network upgrade costs to interconnect energy storage resources into the PSE BAA west of the Cascade Mountains. Please note, however, that this report does not, and cannot, guarantee that any particular energy storage technology can interconnect at any given site. Interconnection for any project can only be established through the interconnection study process conducted by the PSE Transmission Provider. See Exhibit H for a copy of the report.

Transaction Types

PSE will consider the acquisition of CETA-Compliant Energy and Capacity Resources under the following contractual structures:

¹⁹ For more information, please see the Commission's Report and Policy Statement on Treatment of Energy Storage Technologies in Integrated Resource Planning and Resource Acquisition, Docket UE-151069 and U-161024.

²⁰ PSE will conduct the evaluation in a manner consistent with PSE's integrated system planning methodologies. For more on the IRP analysis that informs the 2024 All-Source RFP evaluation process, see PSE's 2021 IRP and 2023 Electric Progress Report, which can be found at <http://www.pse.com/irp>.

SECTION 3. ELIGIBLE RESOURCES

- PSE participating resources, in which PSE would propose to develop, construct, own and operate a bid project. Under PSE would be responsible for all required development, design, equipment supply, construction, commissioning, and performance testing.
- Ownership arrangements, including co-ownership arrangements in which PSE retains dispatchability and rights of control.
- PPAs and capacity tolling agreements of varying lengths, including resource-specific PPAs and tolling agreements with terms greater than four years and up to the end of the asset's useful life,²¹ or temporal exchange agreements.

PSE is interested in alternatives wherein the respondent fully assumes the risk of fuel supply, fuel price, environmental cost and deliverability, and prices the proposal accordingly.

All proposals must comply with Washington's Emissions Performance Standards.²²

PSE Participating Resources

PSE may submit one or more self-build proposals (PSE participating resources). PSE participating resource bids will be required to submit the same information requirements as required of any other Bidder. The PSE evaluation team and the Independent Evaluator will ensure that all resource evaluations, for both PSE participating and third-party resources, will be conducted in a fair and non-preferential manner.

PSE may submit up to ten (10) individual PSE participating resources. PSE participating resources would be new greenfield resources that would interconnect with the PSE transmission system. These resources would be built on property either currently owned or leased by PSE, or on property that PSE will acquire rights to develop. PSE has included the following table to provide information regarding potential PSE participating resource bids.

²¹ PSE will consider contract terms longer than 20 years if the developer can demonstrate the asset has a useful life greater than 20 years.

²² Chapter 80.80 RCW; chapter 173-407 WAC. See also RCW 80.80.060.

SECTION 3. ELIGIBLE RESOURCES

Table 4. *Potential PSE Participating Resource Bids*

State	Resource Type	Structure	Capacity (MW)	Term	Interconnection Status
WA	BESS	EPC/ESA	200	20	Study
WA	BESS	EPC/ESA	100	20	Study
WA	BESS	EPC/ESA	100	20	Study
WA	Peaking Plant	EPC/PPA	315	30	Study
WA	Peaking Plant	EPC/PPA	315	30	Study
WA	Solar/BESS	EPC/BTA	142	N/A	Surplus Transmission Study
WA	Solar/BESS	BTA/PPA	150-200	N/A	Surplus Transmission Study
WA	Solar/BESS	BTA/PPA	115	N/A	Surplus Transmission Study
WA	Solar/BESS	BTA/PPA	120	N/A	Surplus Transmission Study
MT	Wind	EPC	67	N/A	LGIA

As indicated in Table 4, PSE participating resources may be comprised of ownership options in which PSE will own the PSE participating resource or offtake options in which a non-affiliate third party will own the PSE participating resource. For each of the offtake options in which a non-affiliate third party will own the PSE participating resource, PSE will have a purchase option to purchase the entire project outright. PSE participating resource bids using the offtake options in which a non-affiliate third party will own the PSE participating resource will not be eligible to be bid into the 2024 All-Source RFP separately as either PPA or BTA bids.

Members of the PSE evaluation and PSE participating resource bid teams will work in separate physical locations to protect the integrity of the process and will not be allowed to confer on items related to this 2024 All-Source RFP, proposed PSE participating resources, or other bids. Prior to the PSE participating resource bid deadline, the PSE participating resource bid team will save all PSE participating resources in drives that the PSE evaluation team cannot access. Following receipt of the PSE participating resource bids, the PSE evaluation team will save all bids, price and non-price scorecards, and other evaluation documents to drives which the PSE participating resource bid team cannot access. In compliance with WAC 480-107-024(3), neither members of the PSE evaluation team nor any other officer, employee, agent, or independent contract of PSE who may learn of the contents or results of competing third-party bids will disclose the contents or results of such third-party bids to personnel on the PSE participating resource bid team.

All PSE participating resource bids are due no later than 11:59 PM PPT on August 30, 2024, and third-party bids are due no later than 11:59 PM PPT on September 16, 2024. The PSE evaluation

SECTION 3. ELIGIBLE RESOURCES

team will complete the Phase 1 price and non-price scoring for all PSE participating resource bids and forward such models and results to the Independent Evaluator prior to opening and evaluating any third-party bids. The Independent Evaluator will validate the PSE evaluation team's Phase 1 results for the PSE participating resources prior to the opening and evaluating any third-party bids. After receiving and evaluating third-party bids, PSE will compare all PSE participating resource and market bids to provide a final price score for each PSE participating resource and third-party bid. PSE will apply the same assumptions and bid scoring and evaluation criteria to the PSE participating resource bids that are used to score other bids.

Neither the PSE evaluation team nor the Independent Evaluator may accept any changes to any aspect of a PSE participating resource bid after September 15, 2024, unless updates to other bids are permitted. If, during the course of the 2024 All-Source RFP process, the PSE evaluation team and the Independent Evaluator determine that it is appropriate to update bids, PSE will make the equivalent update to the scores of the PSE participating resources.

Ownership

Under an ownership agreement, PSE would ultimately own all or a controlling share of the resource. Ownership mechanisms include development by the respondent followed by transfer to PSE, initial purchase of power by PSE with transfer of ownership occurring later, or other approaches that result in PSE's ownership of the resource.²³ PSE will consider development rights in the 2024 All-Source RFP.

Exhibit J includes prototype term sheets, and Exhibit K includes form agreements for ownership offers. Although PSE will consider a wide range of arrangements, the prototype term sheets and form agreements presume PSE would receive the benefit of any tax credits, acquire its ownership interest prior to the commercial operation date and fund its ownership share on a pro rata basis. The term sheets (Exhibit J) and form agreements (Exhibit K) contemplate closing at mechanical completion to preserve investment tax credit (ITC) benefits for PSE. If a proposal will use production tax credits (PTC), closing can occur at substantial completion.

Power Purchase Agreements and Capacity Tolling Agreements

Any proposal for a PPA must specify the generation asset(s) underlying the agreement, and provide assurances of its commercial availability consistent with the resource needs defined in Section 2.²⁴ PSE will consider contracts with terms greater than 4 years and up to the end of the

²³ To minimize risk to customers and ensure that resources will be online when needed, PSE prefers relatively mature development-and construction-stage resources for this 2024 All-Source RFP.

²⁴ ASC 842 accounting standard will require PSE to consolidate the financial information of any assets subject to a PPA with an option to purchase the asset during or at the end of the contract life.

SECTION 3. ELIGIBLE RESOURCES

asset's useful life. Exhibit J includes prototype term sheets and Exhibit K includes form agreements for PPAs and capacity tolling agreements.

Temporal Exchange Agreements

PSE's obligations under any temporal exchange agreement will be subject to FERC review and approval. Any transmission service component of the exchange would be pursuant to the applicable transmission provider's OATT or similar arrangement and would be payable by the Bidder.

The prototype term sheets appended to this 2024 All-Source RFP do not contemplate every type of resource or proposal that may be bid into this 2024 All-Source RFP. Term sheets include provisions that PSE generally expects in a contractual arrangement; PSE invites Bidders to propose term sheet edits with their bid submissions, including proposed language particular to each project proposal.

SECTION 4. SCHEDULE AND PROCESS

4. Schedule and Process

2024 All-Source RFP Schedule

The following schedule is subject to change based on the actual pace of the evaluation process. PSE will post schedule updates online at <http://www.pse.com/RFP>.

Table 5. *2024 All-Source RFP Schedule*

Date	Milestone
July 1, 2024	PSE issues the 2024 All-Source RFP to Bidders
July 2024*	PSE hosts Bidders' conference <i>Conference to be held in mid-July. Date to be announced.²⁵</i>
August 1, 2024	Proposal submission portal begins to accept bids
August 30, 2024	PSE participating resource offers due <i>* The 2024 All-Source RFP bid submission portal will remain open to PSE participating resource bids until 11:59 PM PPT on August 30, 2024.</i>
September 16, 2024*	All other offers due <i>* The 2024 All-Source RFP bid submission portal will remain open to third-party bids until 11:59 PM PPT on September 16, 2024.</i>
October 16, 2024	PSE posts a compliance report consistent with the requirements of WAC 480-107-035(5) on the 2024 All-Source RFP website
September - October 2024	Phase 1: Screening process and selection of Phase 2 candidates, Bidders notified
Q4 2024–Q2 2025	Phase 2: Due diligence, negotiations and contract executions
To follow	PSE files a compliance report consistent with the requirements of WAC 480-107-145(2) with the Washington Utilities and Transportation Commission (WUTC)

PSE will submit PSE participating resource proposals by August 30, 2024, over two weeks prior to the due date for all other Bidders. The intent of this requirement is to allow PSE's RFP evaluation team to screen and score the PSE participating resource proposals and submit the results with the Independent Evaluator prior to evaluating bids submitted by any other Bidder. See also

²⁵ PSE will post the 2024 All-Source RFP bidders' conference details and registration instructions at www.pse.com/rfp as they become available.

SECTION 4. SCHEDULE AND PROCESS

Exhibits B and C for additional information about PSE participating resource eligibility in this 2024 All-Source RFP and the approach PSE will take to ensure a fair evaluation of all bids.

Evaluation Process

PSE will follow a structured evaluation process designed to screen and rank individual proposals based on an assessment of costs, risks, and benefits. These include resource cost, market-volatility risks, demand-side uncertainties and benefits, resource dispatchability, effects on system operation, credit and financial risks to the utility, risks to ratepayers, equity, public policy, and Washington state and federal government requirements. PSE will consider quantitative and qualitative factors to compare proposals with diverse attributes. PSE will evaluate each proposal based on its compliance with this 2024 All-Source RFP and according to the criteria described in Exhibits A and B.

Independent Evaluator

PSE has retained Bates White Economic Consulting (“Bates White”) to provide independent evaluator services for this 2024 All-Source RFP. Vincent Musco and Frank Mossburg will lead the independent evaluation for Bates White. For information about PSE’s IE selection process and the qualifications of Mr. Musco and Mr. Mossburg, please see the Petition of Puget Sound Energy, Inc. for Approval of Recommended Independent Evaluator, dated March 22, 2024, in Docket UE-240191.²⁶ The Washington Utilities and Transportation Commission approved the Petition on April 25, 2024, in Order 01 in Docket UE-240191.²⁷

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Role and Scope of the Independent Evaluator

Consistent with the requirements in WAC 480-107, the following sections describe the role and scope of the Independent Evaluator.

²⁶ See Petition for Approval of Recommended Independent Evaluator, Docket UE-240191 (Mar. 22, 2024), available at <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=3&year=2024&docketNumber=240191>.

²⁷ In the Matter of the Petition of Puget Sound Energy, Inc., for Approval of the Recommended Independent Evaluator. Docket UE-240191, Order 01 (Apr. 25, 2024), available at <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=11&year=2024&docketNumber=240191>.

SECTION 4. SCHEDULE AND PROCESS

Role and Expectations

The function of the Independent Evaluator is to consult with PSE, as needed, on the procurement activities in the 2024 All-Source RFP as described below.

Responsibilities and Tasks

The responsibilities and tasks of the Independent Evaluator will include the following:

- Ensure that the 2024 All-Source RFP process is fair, transparent, and conducted properly.
- Participate in the design of the 2024 All-Source RFP.
- Evaluate the unique risks, burdens, and benefits of each bid.
- Provide to PSE the Independent Evaluator's minutes of meetings and the full text of written communications between the Independent Evaluator and PSE and any third-party related to the execution of the Independent Evaluator's duties.
- Verify that PSE's inputs and assumptions, including capacity factors and capital costs, are reasonable.
- Assess whether PSE's process of scoring the bids and selection of the initial and final shortlists is reasonable.
- Prepare a final report to the WUTC after reconciling rankings with PSE in accordance with WAC 480-107-035(3). This report must:
 - Include an evaluation of the competitive bidding process in selecting the lowest reasonable cost acquisition or action to satisfy the identified resource need, including the adequacy of communication with stakeholders and Bidders.
 - Explain ranking differences and why the Independent Evaluator and PSE were or were not able to reconcile the differences.
- Immediately report to PSE and the WUTC any perceived attempt by any individual or party, including any PSE self-build and affiliate Bidders, to influence any findings determined by the Independent Evaluator, or to challenge or interfere with their independent role in the solicitation process. See also Exhibit B subsection Code of Conduct, Eligibility and Conflict of Interest Disclosure for more information about self-build and affiliate bids.

Deliverables

The Independent Evaluator will

- Prepare a final written report as to PSE's competitive bidding process, evaluation process and decisions were reasonable and appropriate and applied in a transparent, fair and non-discriminatory manner for all offers received. The report will explain how the Independent Evaluator and PSE reconciled any ranking differences (or why they could not

SECTION 4. SCHEDULE AND PROCESS

do so). The Independent Evaluator will protect confidential Bidder information subject to the terms of the confidentiality agreement included in the Independent Evaluator Request for Proposals²⁸ and consistent with the terms of the confidentiality agreement included in the 2024 All-Source RFP.

- Provide to PSE the Independent Evaluator's minutes of meetings and the full text of written communications between the Independent Evaluator and PSE and any third party related to the Independent Evaluator's execution of its duties.
- Participate as an independent witness or in an advisory capacity during administrative hearings, as required, before the WUTC in any associated proceedings.

Negotiations and Contracts

PSE may elect to negotiate price and non-price factors with any Bidder whose proposal PSE has shortlisted. During negotiations, PSE will continue to update its economic and risk analysis as needed to reflect any additional or revised factors that may affect the total cost of a proposed resource.

If a Bidder alters their offer during negotiations, PSE may reevaluate the offer and suspend talks. PSE has no obligation to enter definitive agreements with any respondent to this 2024 All-Source RFP and may terminate or modify this 2024 All-Source RFP at any time without liability or obligation to any Bidder. This 2024 All-Source RFP shall not be construed as preventing PSE from entering any agreement that it deems appropriate at any time before, during, or after the 2024 All-Source RFP process is complete. PSE reserves the right to negotiate only with those Bidders and other parties who propose transactions that PSE believes, in its sole opinion, to have a reasonable likelihood of being executed substantially as proposed.

²⁸ See Petition for Approval of Recommended Independent Evaluator, Exh. A, available at <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=4&year=2024&docketNumber=240191>.

SECTION 5. CREDIT REQUIREMENTS**5. Credit Requirements**

PSE will not consider collateral thresholds, credit ratings triggers, generalized language asserting adequate assurances of performance, or similar language that might require PSE to provide performance assurance. PSE developed this policy to protect its customers and to avoid undue costs, especially in the event of an industry-triggered credit downgrade.

PSE requires Bidders to provide performance assurance. PSE expects Bidders with credit ratings below investment grade or those of similar creditworthiness, or whose credit ratings drop below investment grade, to provide performance assurance acceptable to PSE, typically in the form of collateral used to mitigate the risk of default. In the case of PPAs, this collateral allows PSE to purchase market power to bridge gaps in the delivery of power and protect its retail customers from both cost and reliability risks. This safeguard is consistent with standard industry practice.

In addition to any provisions included in the prototype term sheets (Exhibit J) and form agreements (Exhibit K) included with this 2024 All-Source RFP, PSE may require negative control provisions in any definitive agreements.²⁹

²⁹ “Negative control provisions” means covenants restricting bidder business practices that could jeopardize bidder’s ability to perform its obligations.

SECTION 6. PROPOSAL SUBMISSION**6. Proposal Submission****Submission Process, Deliverables, and Deadlines**

Bidders will confidentially submit electronic proposals to this 2024 All-Source RFP using PSE's web-based submission portal. A link to the platform and instructions for proposal submission is on the RFP website (www.pse.com/rfp).

The proposal submission portal will begin accepting bids on August 1, 2024. Proposals from Bidders other than PSE or its affiliates are due by 11:59 PM PPT on September 16, 2024, at which point the submission portal will close. Any proposal by PSE or its affiliates will be due approximately two weeks earlier, by 11:59 PM PPT on August 30, 2024. It is the Bidder's responsibility to ensure that proposals are submitted by the close of the bidding period, including allowing time to address questions or issues related to proposal validation and acceptance through the portal.

Bidders may submit questions or comments about this 2024 All-Source RFP to AllSourceRFPmailbox@pse.com. PSE will post answers to questions on its RFP website. PSE will also post schedule updates and supplemental informational updates associated with this 2024 All-Source RFP to PSE's [RFP website](http://www.pse.com/rfp).

SECTION 6. PROPOSAL SUBMISSION

Table 6. *Deliverables and Deadlines*

Deliverable	Date Due	Format
All-Source RFP proposal <i>(See Exhibit B for Proposal Requirements)</i>	PSE or its affiliates: August 30, 2024 All other bids: September 16, 2024	● One electronic copy of the proposal via PSE’s confidential electronic proposal submission web platform (PSE will provide instructions on www.pse.com/rfp when issuing this 2024 All-Source RFP) ○ Proposal must include one complete Excel copy of the Exhibit B-1 (Proposal Requirements) forms and all required attachments (as indicated therein) ○ Please refrain from adding, removing, or modifying tabs in Exhibit B-1 (Proposal Forms). PSE has designed this Excel file to be a key input to the 2024 All-Source RFP proposal database and models. PSE will reject any Exhibit B-1 forms that have tabs modified or removed. Any changes to the integrity of, or a failure to complete the required fields of, the Exhibit B-1 file will cause a validation error response, and the web platform will not accept the proposal until the Bidder corrects this error. ○ Proposal must include one signed scanned copy of Exhibit D (Mutual Confidentiality Agreement) ○ Proposal must also include a signed scanned copy of the Bid Certification Form (Exhibit B-1, Tab 9) in addition to the live version included in the Excel form
Bid fee	No later than three business days after the due date specified above	See Table 7 for details about the bid fee.

SECTION 6. PROPOSAL SUBMISSION**Proposal Requirements Form (Exhibit B-1)**

PSE is committed to providing Bidders with the guidance needed to complete Exhibit B-1 and navigate the proposal submission process successfully. PSE will not simply reject bids because of a data entry error or a misunderstood direction for a specific field. To help Bidders successfully submit their proposals, PSE will provide the following:

- a downloadable user instruction manual on how to navigate and use the 2024 All-Source RFP submission portal and its core features and functions;
- a downloadable user reference on typical expected data validation error messages;
- an overview of the submission process at the Bidders' conference;
- unlimited access to submit and resubmit proposals during the 2024 All-Source RFP submission window; and
- a three-day cure period after the 2024 All-Source RFP due date to allow Bidders to remedy any unacceptable term or condition or other nonconforming criteria or fatal flaw in a proposal.

Bidders may also reach out to the 2024 All-Source RFP team staff through the 2024 All-Source RFP mailbox (AllSourceRFPmailbox@pse.com) with questions about Exhibit B and the automated submission process.

Bidder should note that the bid submittal deadline is not subject to the three-day cure period described in Exhibit C.³⁰ PSE expects Bidders to plan and submit bids on time, allowing sufficient time to seek advice from the 2024 All-Source RFP team in the event of any data entry errors. PSE encourages Bidders to submit proposals early to confirm that the automated system will accept Bidder's proposal forms. Bidders have until the due date to delete and resubmit forms and other supporting files from the portal.

Evaluation Fees

Bidders may submit more than one proposal, but PSE will evaluate only one offer per proposal. Bidders may not vary options, such as capacity (MW), term, start or end dates, pricing structure, transmission delivery point, resource or combination of co-located resources, or other such proposal elements within a single proposal. Bidders shall submit separate sets of proposal requirement forms (Exhibit B-1) and separate bid fees for each proposal submitted.

³⁰ If PSE determines that a proposal is ineligible, contains unacceptable terms or conditions, or has other fatal flaws, PSE will notify the Bidder and give the Bidder a cure period of three business days to remedy the proposal.

SECTION 6. PROPOSAL SUBMISSION

Table 7 presents the evaluation fees applicable to this 2024 All-Source RFP.

Table 7. 2024 All-Source RFP Evaluation Fees

Bid Fee Submittal	• Bid fees will be due no later than three business days after the due date specified in Table 5, and will not be subject to the three-day cure period described in Exhibit C (Evaluation Process). • Bidders must pay the bid fee by certified check or ACH transfer only: ○ Mail certified checks to: ▪ Puget Sound Energy ▪ Attn: Payment Processing ▪ 20000 North Creek Parkway ▪ Bothell, WA 98011 ▪ Memo: [Bidder's Name] 2024 PSE All-Source RFP Proposal # XXXXXX PSE encourages Bidders to send certified checks by registered mail to maintain a record of receipt. ○ ACH Transfers require the following information: ▪ Puget Sound Energy ▪ Payment Processing ▪ Routing number: 125000574 ▪ Bank account number: 479681024614 ▪ Memo: [Bidder's Name] 2024 PSE All-Source RFP Proposal # XXXXXX • Bidders <u>must</u> annotate on the payment the Proposal ID number generated upon successfully submitting the proposal via the 2024 All-Source RFP submission website. This is the only way to ensure that PSE will correctly associate a payment with the corresponding proposal. Failure to annotate a Proposal ID on the method of payment properly may cause unnecessary delays and/or loss of the bid fee. • PSE will also provide instructions for submitting the bid fee on the 2024 All-Source RFP website (www.pse.com/rfp).
Bid Fees	• \$10,000 bid fee per proposal. • Bidders may submit more than one proposal but must provide a separate bid fee for each proposal. • Bid fees help offset costs that PSE incurs while reviewing proposals. Costs may include, but are not limited to, acquiring the services of the Independent Evaluator and other third-party resources to perform independent analysis, conducting studies, engaging legal services, etc.

SECTION 6. PROPOSAL SUBMISSION

Bid Refund Policy	• Bid fees are non-refundable unless a Bidder withdraws a proposal before the submittal deadline applicable to the bid. • If a proposal does not meet the minimum eligibility requirements specified in Exhibit B-1, the bid fee will be non-refundable, but Bidder will be notified and will have three business days to remedy the proposal.
Success Fee	• PSE may enter negotiations and seek to execute contracts for selected resources. • Upon contract execution, PSE will charge a success fee to successful Bidders, assessed at a rate of \$1,000 per MW of offered nameplate capacity, to recover the incremental costs associated with due diligence work or legal services associated with negotiations.

All costs to take part in the 2024 All-Source RFP process, including the preparation of proposals, negotiations, etc., are the sole responsibility of the Bidder.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit A. Evaluation Criteria and Scoring Rubrics

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS*Evaluation Criteria and Scoring*

The goal of the 2024 All-Source RFP is to select the mix of resources that best meets the need expressed in Section 2 of the 2024 All-Source RFP at the lowest reasonable cost and least risk, while taking into account the public interest. See Exhibit C of the 2024 All-Source RFP for a description of PSE's evaluation process, including a discussion of the quantitative and qualitative analysis performed in each phase.

PSE evaluates new long-term electric generation resources based on a combined quantitative and qualitative assessment of all proposals that meet the minimum requirements of the 2024 All-Source RFP. Taken together, the quantitative and qualitative evaluation criteria assess the feasibility of proposals and measure each proposal's ability to meet PSE's resource needs, minimize costs, contribute to the equity and customer benefit provisions required by CETA, manage risk, and advance PSE's strategic and financial priorities.

As described in Exhibit C of the 2024 All-Source RFP, PSE divides the evaluation process into a screening phase (Phase 1) and a portfolio optimization phase (Phase 2). In Phase 1, PSE evaluates and scores resource proposals based on the quantitative and qualitative metrics described in this Exhibit E. PSE then ranks proposals according to the weighted average of their price and non-price scores. PSE will equally weigh the price and non-price scores in the combined scoring (i.e., price and non-price factors will each have a weight of 50 percent).

In Phase 1, the evaluation team will conduct a preliminary qualitative screening to verify that proposals meet the minimum criteria and check for non-conforming elements or fatal flaws that would eliminate proposals from further consideration. Common examples of non-conforming elements and fatal flaws include proposals with insurmountable or otherwise prohibitive feasibility constraints, inability to permit the project or deliver energy, commercially unproven technology, excessive counterparty risk, safety risk, and regulatory or legal risk associated with noncompliance that could adversely affect PSE. The evaluation team will notify a Bidder that has submitted a proposal identified to have non-conforming elements or fatal flaws and give the Bidder three business days to resolve the problem to PSE's satisfaction. Only those proposals that satisfy the RFP's minimum requirements will receive a qualitative or quantitative score. The evaluation team will check each bid for non-conformance throughout the evaluation process.

PSE will use the results of the Phase 1 analyses to identify a list of resources that advance to Phase 2 for portfolio optimization analyses and further due diligence. The portfolio optimization analyses test the portfolio impacts of potential resource combinations and determines the mix of proposals that best meets PSE's resource needs at the lowest reasonable cost. The combined results of the portfolio optimization and PSE's qualitative due diligence findings will determine the resource portfolio that PSE will pursue for contracting.

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS

Quantitative Metrics and Price Score (50%)

PSE seeks proposals for resources that provide the lowest reasonable portfolio cost, taking into account a variety of cost factors that include, but are not limited to, those listed in Table 1 below.

Table 1. *Proposal Cost Factors that Affect PSE's Overall Cost*

Cost Factor	PPA	Ownership
Capital cost		X
Financing cost (rate of return)		X
Operation and maintenance cost		X
Social cost of greenhouse gases ("SCGHG") cost adder	X	X
Expected or potential carbon control or mitigation costs	X	X
Fuel and fuel transportation cost	X	X
Fixed and variable power purchase agreement cost*	X	
Transmission cost	X	X
Ancillary services	X	X
Integration costs	X	X
Transmission system upgrades	X	X
Cost to rebalance debt/equity ratio for imputed debt and consolidated debt **	X	X
Cost of credit facilities		X
Transaction costs and other management costs, etc.	X	X
Cost to meet environmental compliance, including capital improvements and/or capacity limitations and restrictions		X
Renewable energy credits or other environmental attributes	X	X
* Assumes all relevant capital, financing and O&M costs included in PPA price.		
** Imputed debt will be considered for the purposes of consolidated company balance sheet and credit analysis prior to any contracting.		

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS

PSE calculates the metrics described in Table 2. PSE relies primarily on the net levelized cost of energy and net levelized cost of capacity metrics in the Phase 1 screening and ranking described below.

Table 2. *Metrics Calculated by PSE to Assess Proposals*

Metric	Description	Value
Portfolio benefit (\$)	Difference between the net present value portfolio revenue requirement with the proposed project in the portfolio replacing an equivalent amount of generic resource, and the net present value portfolio revenue requirement of the all-generic portfolio. Projects may have a portfolio benefit by displacing higher cost capacity resources, renewable resources, or a combination of both.	Higher is better. Useful for comparing projects of similar size and technology type. Used to determine the least cost combination of resources that meets PSE's resource needs.
Net levelized cost of energy (\$/MWh)	Net present value of a proposed project's revenue requirement divided by the net present value of the project's generation.	Lower is better. Useful for comparing projects that have the same or similar operating characteristics. Less useful for projects with low or no generation.
Net levelized cost of capacity (\$/kw-yr)	Net present value of the proposed project's revenue requirement divided by the net present value of the proposed project's offered nameplate capacity.	Lower is better. Useful for comparing projects that have the same or similar operating characteristics.

In Phase 1, PSE's quantitative analysis will rely primarily on a proposal's net levelized cost of energy (LCOE) or net levelized cost of capacity (LCOC). These metrics are commonly used in the industry to compare the cost of resources with the same or similar operating characteristics. PSE will group proposals into resource categories based on resource and technology type and assign price scores based on their LCOE or LCOC. As described in Exhibit C of the 2024 All-Source RFP, a selection of price-competitive projects from each resource category will proceed to the Phase 2 portfolio optimization stage based on their combined quantitative and qualitative scores, such that the combination of selected resources will total at least 150 percent of PSE's CETA-Compliant Energy and Capacity Resource needs.

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS

In Phase 2, PSE will perform portfolio optimization to identify the lowest cost portfolio of resources to meet its renewable and capacity needs. PSE will conduct sensitivity analyses that consider, at a minimum, different load and market price assumptions. In addition, PSE may also perform sensitivities where each individual resource can be forced in or out of the portfolio to measure the portfolio benefit impact of the resource. Portfolio benefit is a holistic economic indicator that captures the benefits, energy and production costs, capacity contribution, renewable credits, and emission reductions of a resource relative to the alternatives identified in PSE's 2023 Electric Progress Report (EPR) preferred portfolio. Each proposal's portfolio benefit is the difference between the cost of a portfolio with the proposal included and the cost of the all-generic 2023 EPR preferred portfolio.¹ Proposals with a positive portfolio benefit reduce the net electric portfolio costs relative to a generic-only portfolio; proposals with a negative portfolio benefit increase net electric portfolio costs.

Portfolio optimization will capture each project's CETA-Eligible Energy and Capacity Resource contributions with the balance of their costs. Projects that provide a material contribution to both CETA-Compliant Energy and Capacity Resource needs will generally perform best. In addition to identifying the lowest cost portfolio of resources, PSE may also perform analyses aimed at producing a resource portfolio that meets PSE's resource needs while maximizing equity and customer benefits. See Exhibit A-2 for a copy of PSE's equity scoring rubric. A description of PSE's approach to evaluating equity in this 2024 All-Source RFP can be found later in this exhibit.

Qualitative Metrics and Non-Price Score (50%)

PSE will use a qualitative rubric designed to assign value and score certain key non-price elements of resource proposals that meet the minimum requirements described in Exhibit B of this 2024 All-Source RFP. PSE has structured the qualitative rubric to capture what it considers to be the principal qualitative elements, risks, and benefits of each proposal.

Phase 1 Evaluation

The resource evaluation team will assign qualitative scores based on the information that Bidders provided in their proposals, as well as PSE's experience in the market and as a resource owner/operator, and on publicly available information. The evaluation team will also consult as necessary with subject matter experts from specific functional areas throughout PSE.

Attachment A-1 provides PSE's qualitative scoring rubric. Bidders should note the following:

- PSE will deem any proposal that receives a score of 0 in the Site Control Status, Permit/Studies, or Energy Delivery categories to have failed to meet the minimum criteria of the 2024 All-Source RFP and will disqualified any such proposal from further

¹ Consistent with RCW 19.280.030(3)(a)(iii) and the 2023 EPR, PSE will include the social cost of greenhouse gases as a cost factor when modeling the portfolio impact of emitting resources.

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS

consideration if the Bidder does not remedy such failure within the three-business-day cure period.

Equity Score

In addition to receiving the combined quantitative and qualitative scores previously described, PSE will assess each proposal with an equity score based on the equity scoring rubric in Attachment A-2, which is designed to be consistent with the principles of the core energy justice tenets set forth in Order 09 in *WUTC vs. Cascade Natural Gas Corporation*² and the applicable provisions of CETA in RCW 19.405.040(8). See Section F under the *Phase 2 evaluation* section below for a discussion of these principles and PSE's approach to evaluating equity and customer benefits.

Once all projects have received a Phase 1 score, PSE will compare those results to the separately evaluated equity scores. Proposals whose Phase 1 scores would have eliminated them from consideration, but that offer meaningful equity and customer benefits and do not otherwise contain fatal flaws or substantial material risks, may advance to Phase 2 for further due diligence and optimization analyses. PSE may run an equity sensitivity analyses in Phase 2 to address customer benefits and equity considerations to help evaluate the cost/benefit tradeoffs of specific resource selections.

Phase 2 Evaluation

In Phase 2, PSE will perform additional due diligence, where necessary, to dig deeper into the unique risks and merits of particular proposals, verify proposal claims, clarify offer details, and answer any outstanding questions. To do this, the evaluation team may:

- submit data requests to Bidders for clarification of proposal details or for further information to help illuminate the particular risks and benefits of proposals,
- discuss elements of the proposals with Bidders by phone,
- draw on publicly available and non-confidential information as per the Mutual Confidentiality Agreement (Exhibit D) to better understand key elements of the proposals (such as transmission availability, local support/opposition, or the likelihood of successful permitting), and
- utilize a third-party consultant to help assess the reasonableness of resource data.

PSE will use information provided by Bidders as well as information available in the public domain to make an informed evaluation of the commercial maturity, risks and merits of the project in the categories of site control, permitting and studies, energy delivery, and equity plan. PSE will evaluate each proposal based on the merits of the quality and completeness of information

² WUTC vs. Cascade Natural Gas Corporation, Docket UG-210755, Final Order 09 (Aug. 23, 2022), available at <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=685&year=2021&docketNumber=210755>.

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS

sought in each of those categories. PSE may also consider additional factors such as counterparty viability and project viability in its Phase 2 qualitative evaluation and risk assessment. The information provided below is intended to help Bidders prepare as complete a proposal as possible.

A. Counterparty ViabilityExperience

- Direct experience developing and completing at least three projects of similar size and technology deployment in the United States
- Summary curriculum vitae (CV) of all key project team members
 - Company structure and organization
 - List of previous projects and technology types
- Previous safety performance record

Counterparty Stability

- Credit history and stability
- CPA certified financial reports/10Ks for previous three years
- Material legal proceedings within the past five years (PSE will generally consider legal breaches of greater than \$5 million to be material.)

B. Project ViabilityFinancial plan

- Project financing
- Project development history
- Project ownership taxonomy

Supply Chain

- Bill of lading
- Supply agreements
- Fuel supply agreements (if applicable)

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICSTechnology Risk

- Installed project lists
- Original equipment manufacturer (OEM) fleet monitoring statistics

C. Site ControlProject Site and Gen-Tie Line

- Binding letters of land use agreement
- Non-binding letters of land use agreement
- Ownership documentation
- Evidence of local community support for the proposed project

D. Permitting and Studies

- Engineering studies
- Habitat studies
- Environmental impact studies
- State and/or federal discretionary permits
- Commercial and/or residential permits

E. Energy Delivery

- Transmission plan
- Interconnection request and/or agreements
- Transmission request and/or agreements
- Feasibility, system impact, and/or facilities studies

F. Equity Plan

The 2024 All-Source RFP requires Bidders to complete and submit (i) an Equity Evaluation form provided in Exhibit B-2 (referred to as the “Equity Plan”) and (ii) a self-assessment with the provided Equity Evaluation Criteria and Rubric in Exhibit A-2. PSE strongly encourages Bidders to submit additional material with more detail, as appropriate, to help PSE assess the credibility and viability of the Bidder’s Equity Plan. The additional materials should include details on how equity has been (or will be) considered in the planning, development and implementation of the project. The Equity Plan should be

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS

guided by the core energy justice tenets outlined in the *WUTC v. Cascade Natural Gas Corporation*³ and the provisions required in RCW 19.405.040(8), which states that:

In complying with this section, an electric utility must, consistent with the requirements of RCW 19.280.030 and 19.405.140, ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and non-energy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency.⁴

Furthermore, PSE aims to promote equity by drawing insights from the Justice40 Initiative,⁵ the Climate Commitment Act,⁶ and the University of Michigan’s Energy Equity Project.⁷

PSE will evaluate and score each Bidder’s Equity Plan based on the scoring rubric. PSE will base scores on the degree to which the Bidder identifies and explains specific ways in which the proposal addresses the energy justice four tenets, the CETA customer benefits, and its plan for incorporating diversity, equity, and inclusion in its business practices and program. PSE will also look for commitments from Bidders to carry out those plans and to document the contributions of the proposed project. PSE encourages Bidders to include in their Equity Plans the methods by which qualitative data may be collected and analyzed for qualitative evaluation by the PSE evaluation team.

The Energy Justice tenets are recognition, procedural, distributive, and restorative. Recognition justice requires an understanding of historic and ongoing inequalities and prescribes efforts that seek to reconcile these inequalities. Procedural Justice focuses on inclusive decision-making processes and seeks to ensure that proceedings are fair, equitable, and inclusive for participants, recognizing that marginalized and vulnerable populations have been excluded from decision-making processes historically. Distributional Justice refers to the distribution of benefits and burdens across populations. This objective aims to ensure that marginalized and vulnerable populations do not receive an inordinate share of the burdens or are denied access to benefits. Restorative Justice involves using regulatory government organizations or other interventions to disrupt and address distributional, recognition, or procedural injustices, and to correct them through laws, rules, policies, orders, and practices. Bidder responses

³ See note 2, *infra*.

⁴ RCW 19.405.040(8)

⁵ *Justice40 Initiative*, available at www.whitehouse.gov/environmentaljustice/justice40.

⁶ Chapter 70A.65 RCW, available at <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.65>.

⁷ Energy Equity Project, *Energy Equity Framework: Combining data and qualitative approaches to ensure equity in the energy transition*, University of Michigan – School for Environment and Sustainability (2002), available at https://energyequityproject.com/wp-content/uploads/2022/08/220174_EEP_Report_8302022.pdf.

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS

will ensure that named communities and historically disadvantaged populations will be identified and included in the consideration process, establishing an on-going effort to engage and embrace community participation.

CETA creates an inclusive approach to clean energy. It also requires that all customers benefit from the transition to the 2030 carbon-neutral standard and the 2045 requirement for non-emitting and renewable electric resources. Identifying, measuring, and applying customer benefits is a new part of the electric resource planning and resource acquisition process that began in 2021. The 2021 Clean Energy Implementation Plan (the “2021 CEIP”) includes customer benefit indicators (CBIs) by categories; these categories are: (1) Energy and non-energy benefits, (2) Reduction of burdens, (3) Environmental Burdens, (4) Public Health, and (5) Energy Security and Resiliency. PSE partnered with its Equity Advisory Group and interested parties in developing its 2021 CEIP to identify CBIs in each of these categories. Chapter Six of PSE’s 2023 Biennial CEIP Update,⁸ including Table 6.1, which shows the most recently approved list of CBIs, discusses these CBIs in detail.

Terminologies Used

Charitable donations may include any donations that can benefit local community charities.

Customer Benefit funds may include any additional funds that the developer will contribute to the CETA CBI categories.

Tax revenue may include property tax or other local tax benefits.

Priority Communities Impact

Bidders should state if they intend to build in a named community or disadvantaged community and describe the direct impact, potential barriers, and mitigation strategies that their project will provide.

For projects located within the state of Washington, PSE uses the term “Named Communities” to refer to two priority groups: Highly Impacted Communities and Vulnerable Populations. See [PSE Named Communities map tool](#).

Highly impacted community has at least one of the following criteria: (a) the census tract is covered or partially covered by ‘Indian Country’ as defined in and designated by statute; (b) the census tract ranks a 9 or 10 on the Environmental health Disparities Map, as designed by the Washington State Department of Health.

⁸ See Puget Sound Energy, Inc., *2023 Biennial CEIP Update*, Chapter 6 (Community Benefit Indicators) (Nov. 1, 2023), available at https://www.pse.com/-/media/PDFs/CEIP/2023/08_BU23_Ch6_Final.pdf.

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS

Vulnerable Populations means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to adverse socioeconomic factors, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environment harms, and sensitivity factors such as low birth weight and higher rates of hospitalization, RCW 70A.02.010(14)(a)(b). Vulnerable populations are broken out into high, medium and low levels as referenced in the 2023 Biennial CEIP Update, Chapter 3.⁹

For projects located outside the state of Washington, PSE uses the term “Disadvantaged Communities”. This refers to those that are marginalized, underserved, and overburdened by environmental pollution, including low-income communities, communities of color and tribal and indigenous communities.¹⁰ See the [Climate and Economic Justice Screening Tool](#).

Forms and Filing Instructions

The *Qualitative Equity Evaluation Questions in the Equity Plan* and the *Equity Evaluation Criteria and Rubric* are documents expected to be completed for each proposal.

For the *Qualitative Equity Evaluation Questions*, a detailed account or explanation of each of the questions is expected in the proposal equity plan. The questions in this exhibit are separated into four (4) sections, representing the four (4) areas of energy equity tenets.

After completing the *Qualitative Equity Evaluation Questions* (Exhibit B-2), Bidders should complete the self-assessment *Equity Evaluation Criteria and Rubric* document (Exhibit A-2). Here, Bidders will have a chance to assign a score to each of the evaluation questions separately, and if desired, provide a one-sentence description or reference on the rationale of that score.

Sample Scenarios or Calculations

The following is a list of sample scenarios/calculations addressing some of the *Qualitative Equity Evaluation Questions*. These are fictionalized numbers used to demonstrate potential computations. Bidders should consider the variables that will affect each of these calculations and be able to provide supportive evidence for their claim.

⁹ See Puget Sound Energy, Inc., *2023 Biennial CEIP Update*, Chapter 3 (Equity) (Nov. 1, 2023), available at https://www.pse.com/-/media/PDFs/CEIP/2023/05_BU23_Ch3_Final.pdf

¹⁰ PSE’s definition of disadvantaged communities aligns with the guidance outlined in of Executive Order (EO) 14008 on Tackling the Climate Crisis at Home and Abroad, from the Executive Office of the President of the United States Government For geographical mapping of disadvantaged communities, please see <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICSSample scenario for Question 8

Question 8 - Will the proposed resource improve the equitable distribution of non-energy benefits to named communities or disadvantaged communities?

Scenario - If the proposal is estimated to provide 85 jobs during the entire project duration (where the number of jobs is considered under the non-energy benefits category) and an estimated 15 jobs will go to Named Communities, then the calculated impact is 17.6%.

According to the *Equity Evaluation Criteria and Rubric*, the Bidder will have a score of 1. This indicates that the proposal has “minimal impact, less than 20% of non-energy benefits will go to named communities or disadvantaged communities”.

Sample calculations for Question 13

Question 13 - Will the proposed resource or project provide additional economic benefits (such as local tax revenues, customer benefit funds, charitable donations) to named communities or disadvantaged communities?

Scenario 1 - The proposal will benefit the local economy from the growth of clean energy by driving investment in the area, thus increasing local tax revenues. Additionally, the bidder commits to ensure that a proportion - at least 20% of the tax revenue flows directly to initiatives supporting named communities or disadvantaged communities. Then, according to the *Equity Evaluation Criteria and Rubric*, the Bidder will have a score of 1. Indicating that the proposal has “minimal impact, less than 20% of economic benefits will go to named communities or disadvantaged communities”.

Scenario 2 – The proposal will benefit the local economy from the growth of clean energy by driving investment in the area, thus increasing local tax revenues. Additionally, the bidder commits to donating funds to the local community charity or towards the CETA CBI categories where at least half of the funds are directed to initiatives supporting named communities or disadvantaged communities. Then, according to the *Equity Evaluation Criteria and Rubric*, the Bidder will have a score of 2. Indicating that the proposal has “medium impact, approximately 50% of economic benefits will go to named communities or disadvantaged communities”.

Scenario 3 – The proposal will benefit the local economy from the growth of clean energy by driving investment in the area, thus increasing local tax revenues. Additionally, the bidder commits to donating funds to the local community charity or towards the CETA CBI categories where over 50% of the funds are directed to initiatives supporting named communities or disadvantaged communities. Then,

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS

according to the *Equity Evaluation Criteria and Rubric*, the Bidder will have a score of 3. Indicating that the proposal has “Significant impact, over 50% of economic benefits will go to named communities or disadvantaged communities”.

Sample calculation for Question 15

Question 15 - Does the project function as a non-emitting resource or does it contribute to the reduction of greenhouse gas emissions?

Scenario – The project is expected to displace roughly 1% of CO₂ emissions from electric operations (metric tons) during its first year of operation. (Check information provided through [PSE Greenhouse Gas Inventory](#) to calculate this estimate.) Then, according to the *Equity Evaluation Criteria and Rubric*, the Bidder will have a score of 0. Indicating that the proposal is “not likely to reduce greenhouse gas emissions”.

Sample scenario for Question 16

Question 16 - Does the project reduce known environmental burdens to named communities or disadvantaged communities, including reducing biological resources, or ecologically sensitive areas, soil or geographic topographic elements, noise levels, coastal use or resources?

Bidder is expected to identify known environmental impacts of the project through an environmental impact analysis/permit, include demonstrating mitigation strategies and application, measures of the reduction of these environmental impacts, or environmental burdens.

Scenario – The project’s environmental impact identified that it would need to remove forest/tree population (e.g., 20 acres) within the area, and the mitigation strategy is to replace the 20 acres and include an additional 50 acres of the forest/tree population within the named communities or disadvantaged communities. Then, according to the *Equity Evaluation Criteria and Rubric*, the Bidder will have a score of 3. Indicating that the proposal has “significant reduction, over 50% reduction of known environmental burdens to named communities or disadvantaged communities”.

Sample calculations for Question 17

Question 17 - Does the project improve outdoor air quality by reducing regulated pollutant emissions? (NO_x, SO₂, PM_{2.5} or PM₁₀)

“Reduces annual metric tons of NO_x, SO_x, PM_{2.5} or PM₁₀ by 20%” means the project is estimated to reduce PSE’s air pollutant emitting energy source between

EXHIBIT A. EVALUATION CRITERIA AND SCORING RUBRICS

1% - 20%. Through clean energy generation (Check information provided through PSE [Sustainability Accounting Standards Board \(SASB\) Index](#) to calculate this estimate). Then, according to the *Equity Evaluation Criteria and Rubric*, you will have a score of 1, indicating that the proposal will “reduce annual metric tons of NOx, SOx, PM2.5 or PM10 by 20%”.

“Reduces annual metric tons of NOx, SOx, PM2.5 or PM10 by 50%” means the project is estimated to reduce PSE’s air pollutant emitting energy source between 21% - 50%. Through clean energy generation (Check information provided through PSE [Sustainability Accounting Standards Board \(SASB\) Index](#) to calculate this estimate). Then, according to the *Equity Evaluation Criteria and Rubric*, you will have a score of 2, indicating that the proposal will “reduce annual metric tons of NOx, SOx, PM2.5 or PM10 by 50%”.

EXHIBIT A APPENDIX. SAMPLE RUBRIC

Exhibit A Appendix: Sample Rubric

ID	Project Name	Quantitative metrics and price score -50%			Qualitative Metrics and non-price score - 50%						Total - 100%	
		LCOE	Relative Price Score	Price Score Ranking	5%		15%		10%		20%	
					- / 1	- / 4	- / 12	- / 10	Non-Price Score	Non-Price Ranking	Overall Score	Overall Ranking
					Site Control	Permit and Studies	Inter-connection Service	Transmission Service	Non-Price Score	Non-Price Ranking		
1	Wind Project 1	30	100%	1	1	4	12	10	100%	1	100%	1
2	Wind Project 2	55	64%	3	1	4	12	10	100%	2	82%	2
3	Wind Project 3	30	100%	2	1	4	5	3	60%	3	80%	3
4	Wind Project 4	80	29%	4	1	4	1	2	50%	5	39%	4
5	Wind Project 5	100	0%	5	1	4	1	3	54%	4	27%	5

Summary of scoring scenarios

1 **Setup:** ID 1 and 2 - Two different projects; same non-price scores in all categories; only difference is in pricing structure, which results in different LCOE

Result: Project 1 - Offer 1 will score higher due to higher price score. It also shows how the price is determined relative to the highest quantitatively ranked project.

2 **Setup:** ID 1 and 3 - Two different projects; same LCOE and same price scores; only difference in qualitative evaluation is ID 3 has lower scores regarding interconnection and transmission.

Result: Project 1 - Offer 1 will score higher due to higher non-price score.

3 **Setup:** ID 1 and 5 has the lowest and highest LCOE, respectively.

Result: Shows what the price score would be if 100 for the project that has lowest LCOE, and 0 for highest LCOE.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit A-1. Qualitative Rubric

The Exhibit A-1 Qualitative Rubric is designed to be completed by the Bidder.

It has been provided separately as a live Excel form.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit A-2. Equity Rubric

The Exhibit A-2 Equity Rubric is designed to be completed by the Bidder.

It has been provided separately as a live Excel form.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit B. Proposal Requirements and Proposal Forms

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

Proposal Requirements

Confidentiality Agreement

Each bid submittal shall include a signed and scanned copy of the Mutual Confidentiality Agreement (Exhibit D), which is due no later than August 30, 2024, for PSE self-build projects and no later than September 16, 2024, for all other proposals. PSE will return one fully executed, scanned Mutual Confidentiality Agreement to the Bidder.

Consistent with the requirement in WAC 480-107-023, PSE must provide the Independent Evaluator with all data and information necessary to perform a thorough investigation of the bidding process and of Bidders' bids. Consistent with the requirements of WAC 480-107-035, PSE will make available on its website a summary of all proposals received within 30 days of the close of the bidding period. PSE will also file a final summary report with the Washington Utilities and Transportation Commission (WUTC) pursuant to WAC 480-107-145.

In accordance with the requirements of WAC 480-107-145, PSE will retain all information pertinent to this 2024 All-Source RFP process for a period of seven years or until PSE concludes its next general electric rate case, whichever is later. Except to the extent required by law or regulatory order, PSE shall have no obligation under this 2024 All-Source RFP to provide the models and data used in its evaluation process to Bidders or third parties.

2024 All-Source RFP Proposal Requirements

PSE expects Bidders to provide complete information in their original submittals. PSE will not consider proposals that provide information insufficient to substantiate the terms of their offers. Minimum qualifying criteria are defined later in this section.

To ensure that all proposals are thorough and complete, PSE has developed a series of proposal requirements and a proposal form (Exhibit B-1) in Excel format, which includes a comprehensive checklist of required bid materials. See also Figure 1. All Bidders must complete the Exhibit B-1 form, including any required attachments, for each proposal submitted. Additional information, such as a cover letter or other attachments not specifically required in Exhibit B-1, may be provided as part of a Bidder's proposal and will be considered supplementary information to the required Exhibit B-1 form.

Exhibit B-1 shall be considered the primary proposal document. Although it is the Bidder's responsibility to ensure that all information provided in Exhibit B-1 is true and accurate, if the evaluation team identifies an inconsistency between the Exhibit B-1 form and other proposal contents, PSE will seek to clarify the discrepancy with the Bidder with a data request. The Bidder will be given three business days (the "cure period") to correct the discrepancy.

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

The data gathered by Exhibit B-1 is structured and used to populate the 2024 All-Source RFP proposal database and models. Bidders may not add, remove, or modify tabs in Exhibit B-1. Any changes to the integrity of Exhibit B-1, or failure to complete its required fields, will result in a validation error response; the proposal submission web platform will not accept the proposal until Bidder corrects the error.

Figure 1. *Proposal Content Checklist (Exhibit B-1, Tab 1)*

1. Proposal Content Checklist			
Required for all RFP proposals. (Do not remove tab.)			
Proposal element	Required for	Section	Select response from drop-down list (All fields are required for this section, if not applicable, select not applicable from the drop-down list)
Required proposal contents	All proposals	Exhibit B-1	
Proposal Content Checklist	All proposals	Tab 1	1
Commercial Details	All proposals	Tab 2a	2
Offer Details	All proposals	Tab 2b	3
Facility	All proposals	Tab 3	4
Variable Energy	Variable energy (also DERs, if applicable)	Tab 3a	5
Flexible Capacity	Flexible capacity (also DERs, if applicable)	Tab 3b	6
Energy Storage	Energy storage (also DERs, if applicable)	Tab 3c	7
DR_DER_System	DRs, DERs, system resources	Tab 3d	8
Energy Output (8760)	Variable resource proposals	Tab 4	9
Interconnection and Transmission	All proposals	Tab 5	10
Development - Projects Detail	Development or construction project proposals	Tab 6	11
Ownership - Capital Costs	Proposals including asset sale offers	Tab 7	12
Ownership - Operating Costs	Proposals including asset sale offers	Tab 8	13
Bid Certification and contacts	All proposals	Tab 9	14
Exhibit A-1: Qualitative Rubric, and Exhibit A-2: Equity Rubric, and Exhibit B-1: Proposal Form, and Exhibit B-2: Equity Form, and Exhibit D: Mutual Confidentiality Agreement	All proposals	Exhibit A, B, D	15
Prototype Term Sheet (by offer structure)	All proposals (or specify Schedule C)	Exhibit J	16
PSE Customer Consent Letter	Proposals for projects with a pending request for or agreement for PSE transmission or integration	Exhibit I	17

Proposals must be substantially complete consistent with the requirements of this RFP.
Proposals that do not provide sufficient information to substantiate a project or offer will not be considered in this RFP.

Minimum Qualifying Criteria

PSE considers a variety of evaluation criteria when making resource decisions, as described in Exhibit A. PSE has also identified a set of minimum qualifying criteria to help Bidders craft proposals that best meet the objectives of this solicitation. Proposals must meet minimum criteria for consideration in this 2024 All-Source RFP.

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS**For All Proposals, As Applicable**

Completed proposals shall adhere to the following requirements:

- Bidders must submit complete proposals by the due date specified in Section 6 of the 2024 All-Source RFP, including the Proposal Forms (Exhibit B-1) and all other required attachments indicated therein, the Qualitative Scoring Rubric (Exhibit A-1), the Equity Scoring Rubric (Exhibit A-2), the Equity Form (Exhibit B-2), the Mutual Confidentiality Agreement (Exhibit D), the Transmission Customer Consent Letter (Exhibit I) if applicable, and the term sheet (Exhibit J) with proposed edits, if any. PSE has provided Bidders with a proposal contents checklist (Exhibit B-1, Tab 1). PSE will not consider proposals that do not provide information sufficient to substantiate a proposed project or offer.
- Bidders must submit by the proposal due date the appropriate bid fee, as specified in Section 6 of the 2024 All-Source RFP.
- PSE will require credit support based on the Bidder's credit rating consistent with Section 5 of the 2024 All-Source RFP. PSE will require either a parental guarantee, if the counterparty meets investment-grade credit rating, or the posting of security in the form of a letter of credit or equivalent bank guarantee. PSE will not accept credit support required by a Bidder.
- Each proposal shall acknowledge and state that PSE disclaims and shall not assume any risk associated with the potential expiration of, or the Bidder's or other project entity's ability to utilize, any then-applicable federal or state tax incentives, cash grant programs, or similar programs meant to support a relevant resource.
- All proposals must state that all environmental attributes associated with the proportionate share of the project, if any, will accrue to the ownership and beneficial use of PSE. PSE will not accept REC-only proposals at this time.
- Bidders must provide an Equity Plan consistent with the provisions of RCW 19.405.040(8). See Exhibit A-2 (the equity scoring rubric) and B-2 (the equity form), referred to collectively as the "Equity Plan". As described in Exhibit A under the section concerning the Equity Plan, Bidders may also provide supplementary material, such as a separately attached written diversity commitment, policy, or plan; this attachment must be delivered in addition to, not in lieu of, full responses to the prompts found in Exhibits A-2 and B-2.
- All proposals must have a plan for complying with all applicable laws, regulations, published agency guidance and executive orders, including (as applicable) state and federal land use, cultural resource, and environmental laws.

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

- All proposals shall state that there will be no assignment of proposals during the evaluation or negotiation stage of this 2024 All-Source RFP and that, in the event the Bidder and PSE negotiate and execute definitive agreements based on the Bidder's proposal, the definitive agreements and obligations shall not be sold, transferred, assigned, or pledged as security or collateral for any obligation, without the prior written permission of PSE. Any project lender who takes an assignment of the definitive agreements for security and exercises any rights under such agreements will be bound to perform such agreements to the same extent.
- Bidders must certify that they will adhere to all applicable safety laws, guidelines, and industry practices. If a proposal is selected for acquisition, PSE reserves the right to review and assess, at minimum, the previous three-year safety performance of companies responding to this 2024 All-Source RFP to ensure that they meet acceptable standards.
- PSE will not accept conceptual projects and will only consider commercially-proven technologies in this 2024 All-Source RFP. At a minimum, all qualifying bids must:
 - Have a nameplate capacity greater than five MW.
 - Demonstrate that the Bidder has the financial backing, stability, and experience to support the project by meeting the following criteria:
 - Bidder's project team has developed and completed at least three projects of similar size and technology type to proposed project. Please provide references.
 - Provide a parent guarantee from an investment grade entity or letter of credit.
 - Confirm that interconnection request(s) have been submitted prior to bid submission and support the proposed commercial operations date (COD). Bidders must provide the interconnection queue number(s).
 - For resources interconnecting to the PSE Balancing Authority Area (BAA) (PSE.System) west of the Cascade Mountains or an eligible Point of Delivery (POD) identified in Exhibit F, the Bidder must request Network Resource Interconnection Service (NRIS) from the applicable transmission provider, subject to the terms and conditions of the Open Access Transmission Tariff (OATT) of the transmission provider.
 - For resources not interconnecting to the PSE BAA (PSE.System) west of the Cascade Mountains, Bidders must provide a proposed transmission plan (Exhibit B-1, Tab 5) and demonstrate a firm transmission path to the PSE BAA

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

(PSE.System) west of the Cascade Mountains or one or more of the Points of Delivery (POD) identified in Exhibit F, Table 1. Firm transmission means NERC Transmission Service Reservation Priority 6 or 7-F (Firm Point-to-Point Transmission Service), including Conditional Firm Point-to-Point Transmission Service. Bidders will be responsible for arranging balancing and interconnection services for resources outside the PSE BAA. Bidder must have submitted one or more Transmission Service Request(s) for delivery to the PSE BAA (PSE.System) west of the Cascade Mountains or one or more of the Points of Delivery (POD) identified in Exhibit F, Table 1. Bidders must provide the Transmission Service Request queue number(s), study reports related to such requests, and executed Firm or Conditional Firm Point-to-Point Transmission Service Agreements, if any.

- Bidders may propose delivery at busbar, provided the project is located within the PSE Balancing Authority Area (BAA); interconnects at one of the Points of Delivery (POD) specified in Exhibit F, Table 1; or the Bidder has met the minimum requirements for firm transmission to either the PSE Balancing Authority Area (BAA) (PSE.System) west of the Cascade Mountains or an eligible POD identified in Exhibit F and will reassign that transmission to PSE. Bidders must meet all requirements specified in Section 3 of the 2024 All-Source RFP.
- All projects must provide a fuel supply plan or demonstrate a verifiable resource, as applicable:
 - Generation projects requiring fuel must provide the following:
 - Gas-fired generation proposals must provide a plan to achieve firm pipeline capacity or five days of back-up fuel to supply the proposed nameplate of the proposal (which may or may not be the entire output of a plant) for the proposed term.
 - Biomass, biofuel, or other generation resources requiring fuel must provide in their proposals a fuel supply plan that demonstrates the firm availability of the fuel supply (either through an agreement or other equivalent means) to support the proposed capacity for the proposed term.
 - Standalone energy storage projects must demonstrate the ability to charge and discharge as required to meet the need. PSE requires batteries to be studied both as a resource and as a load if the transmission provider requires energy storage projects to be studied as a load. The standalone energy storage project will need to establish both a generation interconnection with transmission for the generation and a means to charge the load either through retail load service or firm transmission service.

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

- Wind project proposals must confirm that the project has, at minimum, one year of verifiable supporting data, adjusted to account for long-term wind speed trends. PSE reserves the right to require additional data and to engage third-party consultants to independently verify project performance as part of its evaluation
- Solar project proposals must confirm that the project has at least one year of verifiable supporting irradiance data. PSE reserves the right to require additional data and engage third-party consultants to independently verify project performance as part of its evaluation.

For Projects in Development

Development proposals must include detail sufficient to substantiate the project's viability and to adequately assess risk. At a minimum, proposals must:

- Include an overall project development and construction schedule for meeting the COD. The project schedule must include detailed milestones from preliminary planning through COD.
- Certify that if selected for acquisition, Bidder will be responsible for meeting its scheduled deadlines. Bidder must pay liquidated damages for failing to meet contractual milestones.
- Identify the geographical boundaries of the overall project by map, sketch, or drawing; depict all property ownerships within those boundaries on the map, sketch, or drawing; and provide real estate agreements demonstrating Bidder's degree of project site control for the purposes of the proposed project. PSE prefers proposals that provide complete copies of all real estate agreements demonstrating control, and independent third-party confirmation of property ownership such as title insurance commitments or policies for each property with copies of all exceptions. For property not under control for the project, PSE prefers proposals that include summaries of property owner contacts and the status of negotiations with those property owners.
- Demonstrate site control consistent with guidance in the non-price scoring rubric in Exhibit A-1 for both the project and any other project-related infrastructure (e.g., generation tie-line). At a minimum, Bidder must:
 - have at least 50% site control of the project lands, and
 - provide supporting evidence, such as letters of intent, leases or other binding agreements.
- Include the following related to permitting and environmental studies:
 - Identify required permits and approvals, and the status of each; and provide a schedule for completion as part of the overall project schedule. PSE prefers proposals

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

that demonstrate the Bidder's permitting acumen (e.g., providing a permitting plan or demonstrating progress, identifying required studies and status, successful outreach to lead agencies and interested parties, indicating past success permitting other projects in the area).

- At a minimum, Bidders must have begun permitting efforts before responding to this 2024 All-Source RFP and must include a detailed and practicable plan for completing them. Specifically, Bidders must include the following requirements in the proposal:
 - A detailed schedule that supports the COD, containing a plan for all required baseline environmental and cultural resource studies, plans and timing for permit application development and submission, major interested party and regulator engagement, and a reasonably forecasted acquisition timeline;
 - Description and documentation of the status of key environmental or cultural resources baseline reports, permit applications and environmental reviews;
 - Where regulated impacts are known and unavoidable, a plan for complying with any applicable legal requirements or applicable published agency guidelines or guidance, including potential mitigation plans;
 - A plan for outreach to interested parties, regulators and Tribes (as applicable) and documentation of any known project opposition;
 - Full documentation of any permit application that has been submitted or permit or authorization that has already been obtained; and
 - Documentation of any permit or use authorization appeals that are pending (if any).
- Include the following information related to engineering, procurement and design:
 - A project layout and site plan.
 - A description of proposed generating equipment, controls, collection system, substation, main transformers, transmission interconnection, roads/grading/civil works, administration and O&M facilities, and other project components.
 - A description of the planned or preferred suppliers and model names/numbers for all major equipment. All equipment and materials shall be procured from Tier 1 suppliers and selected with an emphasis on quality, reliability, and long-term durability. PSE encourages Bidders to support supplier diversity—including suppliers representing minority-, women-, disabled- and veteran-owned businesses—through inclusive, competitive procurement processes.

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

- A discussion of site suitability for the proposed generating equipment (e.g., turbine site suitability review from OEM or discussion of how the proposed equipment will meet site conditions).
- If available, a geotechnical report outlining the effects of site soil conditions and hydrology on project constructability.
- A discussion of how the stated design life will be achieved, including equipment replacement and augmentation.
- Identification of all anticipated engineering, procurement, and construction (EPC) contractors, consultants, and other subcontractors and related services.
- End-of-life considerations and plans for project retirement, including site restoration and recycling of project components, if applicable.
- All designs, materials, and workmanship shall meet utility industry best practices, IEEE/ASME/ASCE/ASTM standards, and NERC/WECC guidelines. Additionally, projects shall meet the following requirements:
 - Projects shall be designed to a minimum facility design life of 30 years. This includes generating equipment, collection system, and other under- or above-ground cabling/electrical/fiber, substation components, onsite buildings, and transmission structures.
 - For PSE-owned projects, all substation and transmission equipment must meet PSE's design standards.
 - Larger projects shall include onsite administration and O&M facilities, as typical for the proposed project type.
 - Siting of major generating equipment must be balanced with minimizing the impact on existing land uses and the environment. Considerations may include permitted land use and lease requirements, noise propagation, visual impacts, safety of site personnel and the public, liability reduction, environmental/wildlife impacts, and project constructability.
- Eligible bids will adhere to the following labor-related criteria:
 - Satisfy the Prevailing Wage Requirements and the Apprenticeship Requirements applicable to the project.
 - Execute an EPC contract for the project that requires the EPC contractor to utilize a Project Labor Agreement, Community Workforce Agreement or Collective Bargaining

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

Agreement, as applicable, in a reasonable and customary form, for major construction activities associated with the construction of the project.

- Satisfy the requirements of Section 11 of Washington House Bill 1589¹ as related to the project. For the avoidance of any doubt, satisfying HB 1589 specifically includes the requirement that the project will be constructed by a prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements.

For Wind Proposals

- Proposals should include only turbine models from industry-recognized, Tier 1 wind turbine suppliers.
- Proposals should include full description of turbine model(s) to be used including history of successor models and relevant improvements that are expected in the proposed model.
- Proposals should indicate anticipated date of third-party certification of proposed turbine model(s) along with the name of the industry-recognized third party providing certification.
- Proposals should describe the design life of the turbine models. If existing turbines are included in the proposal, their expected remaining life should be clearly documented in the proposal.
- Proposals should include documentation of a turbine site-suitability review performed by a third party or by the turbine OEM. Proposed turbines should be documented as being suitable for the site including, but not limited to, the following factors:
 - Average wind speed
 - Turbulence
 - Extreme wind speed ratings
 - Extreme temperature ratings
- Proposals should include documentation indicating the plant's ability to comply with Federal Energy Regulatory Commission ("FERC") Order 661-A, Standard Interconnection Agreements for Wind Energy and Other Alternative Technologies. The plant's ability to

¹ See Washington Decarbonization Act for Large Combination Utilities, 2024 Wash. Laws 351, available at <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/House/1589-S.SL.pdf>.

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

provide appropriate voltage ride-through and voltage support should be clearly documented.

- Proposals should include at minimum one year of avian use and nest surveys that have been conducted in compliance with the U.S. Fish and Wildlife Service’s Land Based Wind Energy Guidelines. Proposals should also include documentation of a plan to comply with applicable published agency guidelines or guidance on wind turbine siting or construction planning. For operational projects, proposals should include documentation of applicable avian conservation or protection plans and disclosure of plans associated with any federal incidental take permitting efforts.
- Proposals should include a wind resource assessment report.

For Solar Projects

- Solar modules shall be procured from a Tier 1 supplier with ground-mounted tracking. Single-axis tracking is preferred, unless site constraints dictate the use of fixed tilt.
- Inverters shall have Grid-Following controllers.
- The project’s final DC/AC ratio should be optimized for lowest cost of energy and approved by PSE during the design process.
- Generator step-up transformers shall be sized to not be the limiting factor for power generation.
- Proposals should include a description of the manufacturer warranties/guarantees for all major equipment in the system, including modules, racking, inverters, control systems, generator step-up transformers, etc.
- Proposals shall include a solar resource assessment with documented multi-year solar irradiance data.
- Site layouts should show topography and identify maximum slope percentages. Where significant slopes exist, proposals should discuss mitigation of the slopes’ impacts on project capacity, design, equipment selection, construction, roads, and maintenance access.
- Solar panel support post embedment depths shall be based on a site-specific geotechnical report. Areas where predrilling for piles will be needed should be specified.
- Security fencing with vehicle gates meeting PSE and state wildlife guidelines will be required around solar array areas.
- Revegetation of disturbed areas will be required after construction.

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS**For Battery Energy Storage Systems**

Proposals for PSE ownership of battery energy storage resources must meet the following minimum requirements:

- Proposals should include a conceptual site layout.
- Proposals should include only batteries and associated equipment (transformers, inverters, controllers, etc.) from industry-recognized Tier 1 battery suppliers and integrators.
- Proposals should identify current likely original equipment manufacturer and include a description of the warranties/guarantees for all major equipment in the system including batteries, inverters, control systems, generator step-up transformers, etc.
- Proposals should specify the following:
 - minimum/maximum cycles/day and cycles/year
 - annual average state of charge
 - warranty duration
 - capacity (showing allowed degradation)
 - discharge rate (C-rate)
 - response time
 - any other operating restrictions or limitations on dispatch
- Proposals should include a full description of the battery technology proposed including history of successful implementation for the application proposed.
- Proposals should indicate the names of the manufacturers of all the major system components along with their history in providing equipment for similar applications.
- Proposals should state the design life of the batteries selected and detail plans for operation as they degrade in performance, as well as a plan for ultimately replacing and recycling the batteries upon end of life.
- Proposal should include a fire protection system and address fire and explosive gas detection, prevention, and mitigation.
- Generator step-up transformers shall be sized to not be the limiting factor for power generation.

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

- Proposals should include a conceptual description of the proposed cooling system.
- Proposals should include documentation of system and equipment compliance with appropriate governing agencies and standards including FERC, the North American Electric Reliability Corporation (“NERC”), the Western Electric Coordinating Council (“WECC”), Underwriters Laboratories (“UL”), the Institute of Electrical and Electronics Engineers (“IEEE”), the National Electrical Code (“NEC”), the Industry Foundation Classes (“IFC”), National Fire Protection Association (“NFPA”), and other authorities as applicable.
- All proposed design engineering firms and project constructors should have a minimum of three to five years proven expertise and experience in projects of similar scope and size.

If available at the time of bid submittal, Bidders should provide the following:

- Comprehensive engineering design documents and drawings well in advance of project construction.
- One-line diagrams, three-line schematics, communication plans and protocols used, and a list of tags and alarms used in the battery management system.

If this information is unavailable at the time of bid submittal, PSE will request it during the evaluation or negotiation process. Projects will be required to meet all PSE requirements and specifications.

For Demand Response and Distributed Energy Resources Proposals

In addition to the applicable requirements in the sections above, demand response and distributed energy resource must meet the minimum requirements identified in Exhibit G.

For Ownership Proposals

In addition to the minimum qualifying criteria required for all proposals, PSE has identified the following criteria for ownership proposals:

- PSE will receive the benefit of any tax credits, will acquire its ownership interest prior to the commercial operation date and will fund its ownership share on a pro rata basis. The term sheets (Exhibit J) and form agreements (Exhibit K) contemplate closing at mechanical completion to preserve investment tax credit (ITC) benefits for PSE. If the project will utilize production tax credits (PTC), closing can occur at substantial completion.
- If a project is selected, PSE will require comprehensive engineering design documents and drawings well in advance of project construction. Projects will be required to meet all PSE requirements and specifications.

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

- Bidders shall certify that all proposed design engineering firms and project constructors have proven expertise and experience in projects of similar scope and size.
- Proposals should include details on the proposed service and maintenance plan for major equipment.
- Proposals should include a description of the manufacturer warranties and guarantees for major equipment and step-up transformers.

Signatures and Certifications

Each electronic proposal must include a scanned copy of the Bid Certification Form (Exhibit B, Tab 9) signed by a duly authorized officer or agent of the Bidder submitting the proposal. By signing the form, the Bidder's duly authorized officer or agent certifies that:

- The Bidder's proposal is genuine, not made in the interest of, or on behalf of, any undisclosed person, firm, or corporation, and is submitted in conformity with any anti-competitive agreement or rules.
- The Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham proposal.
- The Bidder has not solicited or induced any other person, firm, or corporation to refrain from proposing.
- The Bidder has not sought to obtain for itself any advantage over any other Bidder by collusion.

Code of Conduct, Eligibility, and Conflict of Interest Disclosure

This 2024 All-Source RFP will accept proposals from all third-party project developers or owners, marketing entities, or other utilities that meet the minimum requirements and comply with the process guidelines described in this 2024 All-Source RFP. All Bidders shall disclose in their proposals any and all relationships between themselves, the project and members of their project team and PSE, its employees, officers, directors, subsidiaries, or affiliates.

Code of Conduct

PSE is committed to a culture of ownership, accountability, honesty, integrity, and trust. In conducting this RFP, PSE will follow its Code of Conduct. This Code of Conduct outlines the honest and ethical manner in which all employees and board of directors at Puget Energy, Inc., Puget

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS

Sound Energy, Inc., and related subsidiaries are expected to behave, with each employee having a duty to uphold the [Code of Conduct](#).²

FERC regulations governing the sales of energy and capacity at market-based rates impose restrictions on transactions between “market-regulated power sales affiliates” and their affiliated traditional franchised public utilities with captive wholesale or retail customers. Under FERC regulations, “affiliate” is defined in 18 C.F.R. section 35.36(a)(9).

Washington state law and regulations define what constitutes an “affiliated interest,” which is different than how FERC defines “affiliate.” In Washington, affiliated interest is defined in RCW 80.16.010.

PSE Self-Build and Affiliate Proposals

PSE will accept self-build proposals of PSE and proposals of PSE affiliates. Each Bidder to this 2024 All-Source RFP must disclose any subsidiary or affiliate relationship to PSE in Exhibit B-1, Tab 2a.

All Bidders, including PSE for self-build proposals and affiliates of PSE, shall follow a consistent process for submittal. However, PSE self-build proposals are due by 11:59 PM PPT on August 30, 2024, two weeks prior to the due date for all other proposals, are due by 11:59 PM PPT on September 16, 2024. PSE intends to screen and score the self-build proposals and file the results with the Independent Evaluator prior to evaluating any other bids.

PSE will treat all Bidders, including PSE for self-build proposals and affiliates of PSE, in a fair and consistent manner throughout the evaluation. Consistent with PSE’s [Code of Conduct](#)³ and the provisions in WAC 480-107-023 and -024, the 2024 All-Source RFP evaluation team will neither give preferential treatment or special consideration to any PSE self-build, subsidiary or affiliate to ensure no unfair advantage occurs, nor will PSE or its independent evaluator disclose the contents of its 2024 All-Source RFP evaluation or competing proposals to its self-build team, subsidiaries or affiliates prior to the information becoming publicly available. The Independent Evaluator will immediately report to PSE and the WUTC any perceived attempt by any individual or party to improperly influence any findings determined by the Independent Evaluator, or to challenge or interfere with their independent role in the solicitation process.

² <https://pugetenergy.com/pages/codeethics.html>

³ <https://pugetenergy.com/pages/codeethics.html>

EXHIBIT B. PROPOSAL REQUIREMENTS AND PROPOSAL FORMS**Validity, Deadlines, and Regulatory Approval****Bid validity and deadlines**

PSE anticipates selecting a short list in Q2 2025. Unless a bid is withdrawn, PSE will assume that it is valid through completion of the RFP. PSE further assumes that proposals will remain valid for a period that would allow for negotiation and execution of definitive agreements, including any applicable management and regulatory approvals.

Regulatory approvals

Regulatory approvals for resources acquired may not be obtained until the latter half of 2026 or later. PSE may seek post-closing regulatory review of any resource purchases, exchanges, acquisitions, or associated costs that result from this RFP. Such regulatory review could include receipt by PSE from the Washington Utilities and Transportation Commission (“WUTC”) of approvals and orders, as applicable, pertaining to and confirming the inclusion of the full amount of any asset purchase price plus PSE’s transaction costs and other amounts allocable to the construction, start-up, testing and commissioning of the project, as applicable, in PSE’s rate base. Such approvals and/or orders to be in form and substance satisfactory to PSE in its sole discretion.

In addition to being subject to the jurisdiction of the WUTC, PSE is also regulated by the FERC. FERC’s jurisdiction and authority over the activities of PSE are defined in the Federal Power Act and include certain aspects of the acquisition of electric power. In particular, Sections 203 and 205 of the Federal Power Act require, respectively, (i) approval by FERC prior to transferring FERC-jurisdictional assets a value in excess of \$10,000,000; and (ii) certain filings by PSE to support its authorization to sell power and related products at market-based rates.

Pursuant to Section 203 of the Federal Power Act, FERC has approval authority over any acquisition by PSE of generating facilities with a value in excess of \$10,000,000. In reviewing filings under Section 203 of the Federal Power Act, FERC considers the effect on competition, rates, and regulation. FERC's approval of such an acquisition will be based on a finding that it is “consistent with the public interest.”

FERC has authorized PSE to sell power at market-based rates pursuant to Section 205 of the Federal Power Act. As a condition of its authority to sell power at market-based rates, PSE must demonstrate to FERC that it does not possess market power in the relevant markets. Acquisition by PSE of generation or power resources may require PSE to demonstrate that it continues to lack market power after the resource acquisition. In addition, FERC’s regulations prohibit PSE from engaging in the wholesale purchase of energy or capacity from an affiliate without first seeking FERC authorization. As a result, PSE may be required to seek prior FERC approval of any transaction with an affiliated entity.

PSE will evaluate all proposals in light of the requirements of the Federal Power Act and the effect that such regulatory requirements and review may have on PSE.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
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Exhibit B-1. Proposal Form

The Exhibit B-1 Proposal Form is designed to be completed by the Bidder.

It has been provided separately as a live Excel form.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit B-2. Equity Form

The Exhibit B-2 Equity Form is designed to be completed by the Bidder.

It has been provided separately as a live Excel form.

*2024 Voluntary All-Source RFP for CETA-Compliance Energy and
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Exhibit C. Evaluation Process

EXHIBIT C. EVALUATION PROCESS*Evaluation Process***Intake Process**

PSE's evaluation process will begin with the automated intake of proposals through PSE's web platform. Proposals will first be tested by the automated intake system for completeness and adherence to minimum criteria. If the system determines that a proposal is incomplete or fails to meet minimum criteria, it will generate an error-specific response, allowing Bidders to adjust the proposal and resubmit it by the due date.

Because certain minimum criteria may be difficult to confirm algorithmically, the PSE evaluation team will perform a preliminary eligibility screening to verify that all proposals accepted by the system appear to meet the minimum requirements. If a proposal is determined to be ineligible based on manual screening, PSE will notify the Bidder and the Bidder will be given a cure period of three business days to remedy the proposal.

Proposals will be due by 11:59 PM PPT on September 16, 2024. It is the Bidder's responsibility to allow sufficient time to upload and submit their proposal, including allowing time to address any validation errors generated by the intake portal.

PSE will accept self-build proposals (PSE participating resources) in the 2024 All-Source RFP. The PSE evaluation team and Independent Evaluator will evaluate proposals for PSE participating resources in a manner consistent with all other proposals. Proposals for PSE participating resources will be due by 11:59 PM PPT on August 30, 2024, prior to all other proposals. PSE will screen and score the proposals for PSE participating resources (as described in Phase 1: Screening below) and send the models and results to the Independent Evaluator prior to evaluating any other bids to ensure that no unfair advantage occurs.

Phase 1: Screening

In Phase 1, PSE will conduct a preliminary net levelized cost of energy/capacity screening and a qualitative risk screening to produce a list of the most promising resources for further consideration. The quantitative cost screening will include incremental costs associated with delivering and integrating the energy to PSE's system and costs associated with financial and accounting regulations. PSE will use the scoring approach for price and non-price factors presented in Exhibit A to screen and rank proposals based on the Bidder's responses to the proposal form (Exhibit B-1) and qualitative rubric (Exhibit A-1). PSE will also separately evaluate each Bidder's equity plan based on their responses to the equity form (see Exhibit B-2) and the equity rubric (Exhibit A-2).

The PSE evaluation team will combine its quantitative and qualitative screening results to produce a Phase 1 ranking for each proposal and will compare those results to the separately

EXHIBIT C. EVALUATION PROCESS

evaluated equity scores. If it appears that the combined scores have eliminated proposals that may offer meaningful equity and customer benefits and do not otherwise contain fatal flaws or substantial material risks, PSE may at its sole discretion promote those proposals and carry them forward for further consideration. See Exhibit A for the ranks and weights associated with the price and non-price factors considered by PSE, and a description of PSE's approach to scoring individual proposals.

At the end of Phase 1, PSE will identify a list of proposals that will proceed to Phase 2 for due diligence and portfolio-optimization analysis. PSE will select a pool of resources that represents the best-performing proposals from different resource technology categories based on their combined price, non-price and equity scores.

Bids that fail to substantiate a viable proposal, lack credible detail, involve unacceptable risks or prohibitive costs, or otherwise fail to meet the minimum proposal requirements defined in Exhibit B will not be further considered. Any proposal that does not meet the minimum requirements of this 2024 All-Source RFP in the preliminary eligibility screening will be disqualified and will not receive a Phase 1 price or non-price score. All bidders will be notified of their selection status at the end of Phase 1.

Phase 2: Optimization, Due Diligence, Negotiation, and Contract Execution

In Phase 2, PSE will use its optimization model(s) to analyze all proposals to determine the optimal resource mix to meet PSE's capacity need at the lowest reasonable cost, subject to certain modeling constraints (e.g., transmission considerations). "Lowest reasonable cost" is defined in WAC 480-107-007 and 480-100-605 and is determined through analysis of a number of specified costs and risks, including the costs and risks associated with compliance with CETA and other applicable state laws and regulations. The costs and risks associated with compliance with CETA include the customer benefit and equity considerations outlined in RCW 19.405.040(8).

PSE's evaluation process is designed to fairly compare available resource alternatives and to identify the lowest reasonable cost portfolio solution to help meet PSE's resource needs. To do this, PSE will compare different portfolio mixes to determine how each portfolio combination performs in a range of potential future pricing scenarios. PSE's optimization model creates optimal, integrated portfolios for each scenario considered in the analysis. PSE may also perform a customer benefit and equity sensitivity analysis aimed at maximizing customer benefits and equity to help evaluate the cost/benefit tradeoffs of specific resource selections. PSE reserves the right to conduct additional due diligence on any of the proposals as needed during Phase 2.

This may include engaging with Bidders to discuss aspects of a proposal, verify proposal claims or obtain supporting data and documents; engaging third-party consultants to independently verify projected resource performance; or using other publicly available information. PSE will assess proposed edits to term sheets and form agreements submitted by Bidders by screening

EXHIBIT C. EVALUATION PROCESS

for terms and conditions that present unreasonable or excessive risk to PSE or its customers. PSE will assess such risk on a pass/fail basis. If PSE determines that a proposal contains unacceptable terms or conditions, the Bidder will be given three business days to remedy the issue, consistent with the cure period allowed for the correction of other non-conforming elements or fatal flaws.

During Phase 2, PSE will also pursue contract negotiations and executions with selected Bidders. Proposals selected by the optimization analysis that help meet PSE's resource needs at the lowest reasonable cost, are commercially ready and deliverable to PSE's system, with no fatal flaws or prohibitive risks, will be prioritized for quicker execution. More complex proposals or those requiring further due diligence may continue to be evaluated for potential contract execution at a later point in Phase 2.

PSE reserves the right to suspend at its sole discretion negotiations with any Bidder and initiate discussions with an alternate Bidder if it deems such an action to be in the best interests of PSE and its customers.

Proposals that PSE determines present unacceptable risks, or that otherwise fail to meet the minimum proposal requirements defined in Exhibit B will not be selected for contract execution. All Bidders will be notified of their selection status at the end of Phase 2.

Negotiations and Contracts

PSE may elect to negotiate price and non-price factors with any Bidder whose proposal has been selected. During negotiations, PSE will continue to update its economic and risk analysis as needed to reflect any additional or revised factors that may impact the total cost of a proposed resource.

PSE has no obligation to enter into definitive agreements with any Bidder and may terminate or modify this 2024 All-Source RFP at any time without liability or obligation to any Bidder. This 2024 All-Source RFP shall not be construed as preventing PSE from entering into any agreement that it deems appropriate at any time before, during, or after the 2024 All-Source RFP process is complete. PSE reserves the right to negotiate only with those Bidders who propose transactions that PSE believes, in its sole opinion, to have a reasonable likelihood of being executed substantially as proposed.

Time is of the essence in this 2024 All-Source RFP. PSE expects to move quickly through the evaluations in Phases 1 and 2 and in negotiations with Bidders. Unless there is a systemic change that affects all Bidders (e.g., changes in tax policy), PSE does not intend to offer any opportunity for Bidders to submit revised prices on proposals. PSE expects that each Bidder will submit a "first and best offer" for initial proposals and maintain offer prices throughout the evaluation and negotiation periods. If any Bidder seeks to revise price terms for a proposal, PSE will reassess the offer for such proposal and may suspend negotiations with such Bidder.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit D. Mutual Confidentiality Agreement

EXHIBIT D. MUTUAL CONFIDENTIALITY AGREEMENT

Mutual Confidentiality Agreement

This Agreement, dated as of _____, 2024, is entered into between Puget Sound Energy, Inc. ("PSE") and _____ ("_____"). PSE and _____ are sometimes referred to in this Agreement as "Party," and collectively as "Parties."

1. The Parties intend to enter into discussions regarding one or more potential transactions between the Parties involving the acquisition of electrical generation output or an interest in power generation facilities (or both). In the course of these discussions, each Party may disclose Confidential Information to the other. For the purposes of this Agreement, "Confidential Information" means any information or data disclosed in connection with such discussions in any form or media whatsoever by either Party (the "Disclosing Party") to the other Party (the "Receiving Party") which (a) if in tangible form, or other media that can be converted to readable form, is clearly and conspicuously marked as proprietary, confidential or private on each page thereof when disclosed; or (b) if oral or visual, is identified in writing as proprietary, confidential or private at the same time it is disclosed. "Confidential Information" includes all originals, copies, notes, correspondence, conversations and other manifestations, derivations and analysis of the foregoing.

2. Confidential Information shall not include information that (a) is or becomes generally available to the public other than by reason of the Receiving Party's breach of this Agreement; (b) the Receiving Party can reasonably demonstrate (i) was known by the Receiving Party, prior to its disclosure by the Disclosing Party, without any obligation to hold it in confidence, (ii) is received from a third party free to disclose such information without restriction, (iii) is independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party; (c) is approved for release by written authorization of the Disclosing Party, but only to the extent of such authorization; or (d) is related to the transmission of power, including but not limited to, any information which must be disclosed to the transmission function of a Party as part of any transmission request or information exchange that is required to be made public pursuant to Federal Energy Regulatory Commission or other governmental rules and regulations. Notwithstanding anything to the contrary set forth in this Agreement, the Receiving Party shall not be obligated to keep confidential any Confidential Information that (A) is required by law or regulation to be disclosed (including, without limitation, any summary or ranking of any proposal by the Disclosing Party constituting Confidential Information that PSE is required by law or regulation to make available to the public), but only to the extent and for the purposes of such required disclosure or (B) is required to be disclosed in response to a valid order or request of a court or other governmental authority having jurisdiction or in pursuance of any procedures for discovery or information gathering in any proceeding before any such court or governmental authority, but only to the extent of and for the purposes of such order, provided that the Receiving Party, who is subject to such order or discovery, gives the Disclosing Party reasonable advance notice (e.g., so as to afford the Disclosing Party an opportunity to appear, object and obtain a protective order or other appropriate relief regarding such disclosure). The

EXHIBIT D. MUTUAL CONFIDENTIALITY AGREEMENT

Receiving Party, who is subject to such order or discovery, shall, at the Disclosing Party's expense, use reasonable efforts to assist the Disclosing Party's efforts to obtain a protective order or other appropriate relief; provided, that the Disclosing Party acknowledges and agrees that the Receiving Party shall have no obligation or responsibility to appear before, or to make any showing to, any court or any other governmental authority in connection with protecting any Confidential Information from disclosure by such court or governmental authority, and such responsibility shall be solely that of the Disclosing Party.

3. The Parties acknowledge that PSE is a public utility regulated by the Washington Utilities and Transportation Commission ("Commission") and that its decisions regarding one or more potential transactions between the Parties involving the acquisition of electrical generation output or an interest in power generation facilities, together with related Confidential Information, may be subject to review by the Commission. Notwithstanding the provisions of Section 2, in the event that such PSE decisions are at issue in a proceeding before the Commission, PSE will seek, at its own expense, a protective order from the Commission with "highly confidential provisions" to protect against the disclosure of Confidential Information to competitors and the public. Disclosure of Confidential Information by either of the Parties to the Commission, its staff, counsel for the Commission or Public Counsel in the Attorney General's Office, or their internal advisors, in connection with any such proceeding will not violate this Agreement, nor will the filing with the Commission of generic bid summaries made in compliance with WAC 480-107-035 or -145.

4. Each party acknowledges and agrees that it has no proprietary or exclusive right to any tax matter, tax idea, tax structure or tax treatment related to any potential transaction or transaction between the Parties and that no such tax matter, tax idea, tax structure or tax treatment shall be deemed to be the Confidential Information of either Party.

5. The Receiving Party shall, subject to the other provisions of this Agreement, (a) use the Confidential Information only for purposes of evaluating one or more potential transactions between the Parties involving power generation facilities or the output thereof; (b) restrict disclosure of the Confidential Information only to employees, advisors, contractors (including any independent evaluator engaged pursuant to WAC 480-107-023), agents, representatives and active or potential investors or lenders of the Receiving Party and affiliates ("Representatives") with a "need to know"; (c) advise such Representatives of the confidential nature of the Confidential Information and their obligation to keep such information confidential; and (d) copy the Confidential Information only as necessary for those Representatives who are entitled to receive it, and ensure that all confidential notices are reproduced in full on such copies. A "need to know" means that the Representatives require the Confidential Information to perform their responsibilities in evaluating or pursuing one or more potential transactions between the Parties involving power generation facilities or the output thereof.

6. Confidential Information shall be deemed to be the property of the Disclosing Party. This Agreement shall not be interpreted or construed as granting any license or other right under or

EXHIBIT D. MUTUAL CONFIDENTIALITY AGREEMENT

with respect to any patent, copyright, trademark, trade secret or other proprietary right. The Receiving Party shall, within 30 days of a written request therefor by the Disclosing Party, either return all of the Disclosing Party's Confidential Information (or any designated portion thereof) to the Disclosing Party or destroy all such Confidential Information (or any designated portion thereof) and provide an officer's certificate as to the destruction of such Confidential Information; provided, that PSE, as a Receiving Party, shall not be obligated to return to the Disclosing Party any proposal by the Disclosing Party, or any information related thereto, constituting Confidential Information, and PSE will retain all such proposals and information for the period set forth in Washington Administrative Code 480-107-145(1), which requires PSE to retain such materials for a period of at least seven (7) years from the completion of the RFP process, or the conclusion of PSE's next general electric rate case, whichever is later.

7. Neither this Agreement nor any discussions or disclosure hereunder shall (a) be deemed a commitment to any business relationship or contract for future dealing with another Party or (b) prevent either Party from conducting similar discussions with any third party, so long as such discussions do not result in the use or disclosure by the Receiving Party of Confidential Information protected by this Agreement. If the Parties elect to proceed with any transaction, then all agreements, representations, warranties, covenants and conditions with respect thereto shall be only as set forth in a separate written agreement to be negotiated and executed by the Parties.

8. Each of the Parties acknowledges that the Confidential Information received from another Party constitutes valuable confidential, commercial, business and proprietary information of the Disclosing Party and serious commercial disadvantage or irreparable harm may result for the Disclosing Party if the Receiving Party breaches its nondisclosure obligations under this Agreement. In such event or the threat of such event, the Disclosing Party shall be entitled to injunctive relief, specific performance and other equitable relief without proof of monetary damages. In any action to enforce this Agreement or on account of any breach of this Agreement, the prevailing Party shall be entitled to recover, in addition to all other relief, its reasonable attorneys' fees and court costs associated with such action.

9. This Agreement may not be assigned by either Party without the prior written consent of the other Party. No permitted assignment shall relieve the Receiving Party of its obligations hereunder with respect to Confidential Information disclosed to it prior to such assignment. Any assignment in violation of this Paragraph 9 shall be void. This Agreement shall be binding upon the Parties' respective successors and assigns.

10. This Agreement shall be deemed to be effective as of the date first above written, and shall continue thereafter for a period of seven (7) years or, if later, upon the conclusion of PSE's next general electric rate case.

11. No Party shall be liable to another Party for any consequential, indirect, incidental, special, exemplary or punitive damages arising out of or related to this Agreement.

EXHIBIT D. MUTUAL CONFIDENTIALITY AGREEMENT

12. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state of Washington, without regard to such state's choice of law principles to the contrary. Each of the Parties irrevocably consents to the exclusive jurisdiction and venue of any state or federal court located in King County, Washington, with regard to any legal or equitable action or proceeding related to this Agreement.

13. This Agreement represents the entire understanding between the Parties with respect to the confidentiality, use, control and proprietary nature of any information disclosed by the Disclosing Party to the Receiving Party and the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. The provisions of this Agreement shall not be modified, amended or waived, except by a written instrument duly executed by both of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of _____, 2024.

PUGET SOUND ENERGY, INC.

By _____

Its _____

[OTHER PARTY]

By _____

Its _____

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit E. Schedule of Estimated Avoided Cost

EXHIBIT E. SCHEDULE OF ESTIMATED AVOIDED COST

Schedule of Estimated Avoided Cost

This schedule, as required by in WAC 480-106-040(1)(a), identifies the estimated avoided cost and does not provide a guaranteed contract price for electricity. The schedule only provides general information to potential respondents about the avoided costs. The schedule of estimated avoided costs includes the following two tables:

- **Table 1:** 2024-2043 avoided energy costs, based on PSE's forecast of market prices for the Mid-C Market in its 2023 Electric Progress Report filed on March 30, 2023, in accordance with WAC 480-100-625(4).
- **Table 2:** 2024-2043 incorporates the avoided capacity costs by resource type. These costs are estimated based upon PSE's 2023 Electric Progress Report filed on March 30, 2023, with the assumption that the capacity resource addition is a frame biodiesel peaker for 2024-2043.

Table 1. *Avoided Costs Filed in Electric Tariff G, Schedule 91 (Oct. 2023)*

2024-2043 Avoided Energy Costs based on the Company's forecast of market prices for the Mid-C Market in its 2023 Progress Report in accordance with WAC 480-100-625(4) and WAC 480-106-040(a) (Nominal \$/MWh)													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg. Annual
2024	39.63	34.62	28.06	25.48	18.80	25.90	41.99	39.52	43.83	37.21	37.83	42.11	34.60
2025	36.53	35.25	28.43	25.91	18.10	25.72	43.40	39.52	45.69	39.52	38.58	44.07	35.07
2026	40.56	37.51	28.65	26.60	19.30	27.72	48.36	43.13	48.76	42.21	40.09	47.36	37.54
2027	44.76	43.26	33.36	29.87	20.67	32.23	54.24	48.89	54.25	46.43	45.05	50.92	42.00
2028	48.81	43.09	33.96	30.33	22.08	32.79	55.96	51.51	54.65	47.06	46.28	54.19	43.42
2029	47.16	41.67	31.04	29.90	21.21	30.97	56.35	53.98	59.35	49.82	47.93	53.70	43.62
2030	47.25	41.25	28.86	27.96	21.28	30.19	57.33	53.89	58.43	49.54	47.17	53.66	43.11
2031	43.73	41.48	28.51	30.42	18.73	30.98	58.78	54.89	59.99	50.06	47.64	54.63	43.35
2032	45.70	40.25	27.30	27.92	17.50	32.21	59.80	56.79	63.91	51.87	48.94	56.06	44.05
2033	45.97	42.63	28.01	27.41	17.08	33.43	66.18	62.35	62.92	54.36	50.75	61.17	46.08
2034	44.72	39.55	29.17	29.93	18.57	34.77	69.13	60.31	65.16	57.12	52.61	60.22	46.84
2035	48.13	42.67	29.00	29.97	18.76	32.11	73.47	67.31	74.18	59.98	54.95	63.40	49.57
2036	51.27	40.68	27.93	28.88	17.96	33.34	78.64	69.53	74.86	58.73	53.78	64.03	50.05
2037	47.53	43.33	31.94	29.07	15.61	34.48	80.66	72.61	79.31	59.44	55.46	66.95	51.45
2038	48.74	39.85	27.70	28.54	16.53	34.02	84.20	70.73	80.97	63.14	56.52	70.80	51.93
2039	51.29	43.69	28.06	28.31	16.45	39.28	86.83	74.81	80.62	62.83	59.70	71.77	53.74
2040	49.87	40.71	29.20	28.94	18.16	40.70	89.73	75.98	82.77	66.41	56.38	73.33	54.45
2041	58.79	45.67	28.21	29.94	14.90	35.20	92.56	83.56	89.62	66.93	63.05	75.47	57.11
2042	59.15	44.92	26.89	29.51	14.59	38.35	101.7	92.74	91.72	66.90	61.39	81.39	59.27
2043	59.81	44.28	30.51	28.65	15.73	42.72	107.6	89.90	96.07	67.15	64.72	84.67	61.16

EXHIBIT E. SCHEDULE OF ESTIMATED AVOIDED COST

Table 2. *Avoided Capacity Cost Filed in Electric Tariff G, Schedule 91 (Oct. 2023)*

2024-2043 Avoided Capacity Costs per the Company's 2023 Progress Report (Nominal \$/MW)			
	Baseload Resource	Wind Resource	Solar Resource
2024	\$15.49	\$5.44	\$2.48
2025	\$15.45	\$5.43	\$2.47
2026	\$15.49	\$5.44	\$2.48
2027	\$15.49	\$5.44	\$2.48
2028	\$15.49	\$5.44	\$2.48
2029	\$15.45	\$5.43	\$2.47
2030	\$15.49	\$5.44	\$2.48
2031	\$15.49	\$5.44	\$2.48
2032	\$15.49	\$5.44	\$2.48
2033	\$15.45	\$5.43	\$2.47
2034	\$15.49	\$5.44	\$2.48
2035	\$15.49	\$5.44	\$2.48
2036	\$15.49	\$5.44	\$2.48
2037	\$15.45	\$5.43	\$2.47
2038	\$15.49	\$5.44	\$2.48
2039	\$15.49	\$5.44	\$2.48
2040	\$15.49	\$5.44	\$2.48
2041	\$15.45	\$5.43	\$2.47
2042	\$15.49	\$5.44	\$2.48
2043	\$15.49	\$5.44	\$2.48

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
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Exhibit F. PSE Transmission Available for Delivery of Bidder Proposals in this RFP

EXHIBIT F. TRANSMISSION AVAILABLE FOR DELIVERY OF BIDDER PROPOSALS IN THIS RFP***Transmission Available for Delivery of Bidder Proposals in this RFP***

PSE’s energy supply merchant department (“PSE Merchant”) has identified certain Point-to-Point Transmission Service Agreements that have available capacity for delivery of resource proposals that may assist PSE in meeting its resource need at the lowest reasonable cost. PSE Merchant has determined that it is operationally feasible to accommodate deliveries from resources to the specific Points of Delivery (POD) listed in Table 1 below. Bidders must demonstrate that their project has an achievable plan to secure NERC Transmission Service Reservation Priority 6 or 7-F (Firm Point-to-Point Transmission Service), including Conditional Firm Point-to-Point Transmission Service to one or more of the PODs listed in Table 1 below by the project commercial operation date (COD). PSE prefers that deliveries are fully integrated, balanced, and will be delivered on a firm hourly schedule. Resources delivering to one or more PODs listed in Table 1, up to the listed available amount, will not be assigned additional costs for transmission service from the specified PODs to PSE Balancing Authority Area (BAA).

Table 1. *Summary of Transmission Capacity Available for Delivery of Proposed Resources*

Location / Resource	Amount	Date of first availability	Point of Delivery / Point of Interconnection
Mid-C	Up to 1,000 MW ¹	1/1/2026 ¹	PSE prefers NWH (BPA). MIDCREMOTE may be considered as an alternate.
California Oregon Intertie (COI)	Up to 300 MW	1/1/2028	COB/MALIN (PSEI) Alternately JOHNDAY (BPA)
Centralia	Up to 100 MW	1/1/2026	CENTRALIA (BPA)
British Columbia – United States Border	Up to 310 MW	1/1/2027	BC.US.BORDER

See also Section 3 (Eligible Resources) of the 2024 All-Source RFP, under Energy Delivery.

¹ PSE may accept deliveries to Mid-C earlier than 1/1/2026. The 1,000 MW takes into account current Mid-C hydro resource positions. Proposals will be evaluated based on the best available information at the time the analysis is conducted, taking into account lowest reasonable cost, the operational capabilities of existing and new resources, and the unique characteristics of the Mid-C as a liquid market hub.

EXHIBIT F. TRANSMISSION AVAILABLE FOR DELIVERY OF BIDDER PROPOSALS IN THIS RFP

The following sections describe in more detail the resources available at the locations described in Table 1 and requirements for Bidders proposing to use these PODs.

Mid-Columbia (“Mid-C”)

PSE Merchant has existing long-term Firm Point-to-Point Transmission Service capacity on the BPA transmission system that PSE can use to deliver energy from an identified generation source to the PSE BAA. PSE prefers that Bidders deliver energy to BPA’s NWH POD, but PSE will consider BPA’s MIDCREMOTE POD as an alternative. Bidders who submit projects interconnecting to the Mid-C transmission system and delivering to BPA’s NWH or MIDCREMOTE may need to secure necessary transmission arrangements with the appropriate transmission provider. PSE prefers that deliveries at Mid-C are fully integrated, balanced, and will be delivered on a firm hourly schedule.

California Oregon Intertie (“COI”)

PSE Merchant has long-term Firm Point-to-Point Transmission Service capacity on two legs from the California Oregon Border (COB)/Malin to the PSE BAA for energy delivery. The southern leg of transmission is on the COI and the northern leg of transmission is on the BPA transmission system starting at JOHNDAY. PSE prefers that deliveries to COB/Malin or JOHNDAY are fully integrated and balanced and can be delivered on a firm hourly schedule. Resources delivered at Malin and John Day will have effective load carrying capabilities (“ELCCs”) adjusted to reflect summer peak contribution.

Centralia

PSE will consider projects that deliver to the CENTRALIA POD starting January 1, 2026. PSE prefers that deliveries to the BPA CENTRALIA POD are fully integrated, balanced, and will be delivered on a firm hourly schedule.

British Columbia – United States Border

PSE Merchant has long-term Firm Point-to-Point Transmission Service on the BPA transmission system that PSE can utilize to deliver energy from B.C. - U.S. Border to the PSE BAA.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
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Exhibit G. Demand Side Resources Addendum

EXHIBIT G. DEMAND SIDE RESOURCES ADDENDUM

Demand Side Resources Addendum

PSE filed a targeted Distributed Solar and Storage Resources RFP (“2024 DSS RFP”)¹ on May 20, 2024. The 2024 DSS RFP provides guidance regarding PSE’s distributed solar and storage resource requirements. PSE encourages any Bidder that seeks to submit a proposal for distributed solar and storage resources to refer to the 2024 DSS RFP for more information and technical details related to distributed solar and storage resources.

PSE intends to issue a Demand Response Request for Information in late 2024 (“2024 DR RFI”) and a Demand Response Request for Proposals in 2025 (“2025 DR RFP”). PSE welcomes any proposals for demand response in this 2024 All-Source RFP. PSE strongly encourages Bidders submitting demand resource resources to participate in the 2024 DR RFI and submit proposals to the 2025 DR RFP. The 2024 DR RFI and the 2025 DR RFP will provide greater detail and requirements applicable to demand response resources than are available at this time.

CETA sets a trajectory for electric utilities, including PSE, to provide electricity that is carbon neutral by 2030 and 100 percent carbon-free by 2045. PSE’s 2023 EPR modeling shows distributed energy resources as a growing part of PSE’s electricity resource portfolio to “achieve targets at the lowest reasonable cost,” per CETA requirements. Table 1 below illustrates the 2023 EPR’s targets for distributed solar, excluding net-metering, and distributed storage from 2026 to 2030. The capacity (MW) targets listed below are not fixed, and depending on proposals received PSE could exceed its yearly targets.

Table 1. *PSE’s 2023 EPR Incremental Distributed Energy Resource Additions from 2026-2030*

Resource Type (Incremental Additions)	2026	2027	2028	2029	2030	Total
Solar	30 MWs	30 MWs	33 MWs	32 MWs	30 MWs	155 MWs
Storage	29 MWs	32 MWs	29 MWs	28 MWs	30 MWs	148 MWs

PSE’s 2024 DSS RFP seeks to add distributed energy resource projects to PSE’s to meet the targets laid out in the 2023 EPR. In particular, the 2024 DSS RFP is seeking the following resource types:

- **Distributed Solar (ground and rooftop):** PSE is seeking to fulfill a 30 MW target of distributed solar capacity by the end of 2026. PSE’s longer-term goal is to acquire 155 MWs of distributed solar capacity by 2030. PSE is only seeking Front-Of-The-

¹ <https://www.pse.com/en/pages/energy-supply/acquiring-energy/2024-Distributed-Solar-and-Storage-RFP>

EXHIBIT G. DEMAND SIDE RESOURCES ADDENDUM

Meter (“FTM”) installations, both ground and rooftop mounted, through the 2024 DSS RFP. The minimum size for an installation is 200 kW_{AC}, with a maximum of 4.99 MW_{AC}.

- Distributed Battery Energy Storage System (“BESS”) (standalone or paired with solar): The 2024 DSS RFP seeks to fulfill a 29 MW target of BESS capacity by the end of 2026. PSE’s longer-term goal is to acquire 148 MWs of distributed BESS by 2030. PSE is only seeking FTM and BESS installations that are either standalone resources or paired with solar installations. PSE must also have direct control over the BESS installation through its virtual power plant (“VPP”). The minimum size for an installation is 200 kW_{AC}, with a maximum of 4.99 MW_{AC}. For BESS paired with solar, the sum of the two facilities’ capacity must not exceed 4.99 MW_{AC}.

To qualify for the 2024 DSS RFP, all resources must interconnect to PSE’s distribution system.² The 2024 DSS RFP is targeting projects that will be commercially operable by the end of 2026. PSE will evaluate any commercially viable distributed solar and BESS project proposals that comply with all applicable laws and regulations and meet the minimum qualification requirements described in Exhibit B of the 2024 DSS RFP.

This 2024 All-Source RFP and the 2024 DSS RFP are separate requests; bidders should submit proposals into one or the other process, but not both. If a Bidder submits similar proposals into both processes, PSE will have the discretion to determine which process is best suited to evaluate the proposal. PSE will not evaluate the same proposal in both processes. Bidders who choose to submit proposals into the 2024 All-Source RFP must meet the minimum requirements outlined below and in Exhibit B (Proposal Requirements).

Demand Response

Demand response programs are resources that control customer load. To be eligible for this 2024 All- Source RFP, demand response resources, whether stand alone or aggregated programs,³ must exceed a 5 MW_{AC} nameplate threshold. In addition to the minimum requirements in Exhibit B, demand response proposals must meet the following requirements:

- Winter events will occur during peak hours on any day of the week, between 7 a.m. PPT to 10 p.m. PPT, from November 1 through March 31 (the “Winter Season”) and May 1 through September 30 (the “Summer Season”).⁴ PSE may call demand response events outside these time windows in emergency conditions, but performance outside of deemed peak hours and months will be graded separately

² See [Schedule 152](#) and PSE’s [Small Generation Technical Specification 160.70](#) for requirements for distribution interconnected generators.

³ Aggregated resources must fill out customer acquisition plans on Tab 3d (DR_DER_System) of Exhibit B.

⁴ PSE uses a daily forecast high below 40 degrees Fahrenheit and/or a forecast low below 30 degrees Fahrenheit to trigger a higher state of readiness for peak load. Demand response events can also be triggered at any time to address system emergency conditions within the program parameter constraints.

EXHIBIT G. DEMAND SIDE RESOURCES ADDENDUM

and on a different scale than within normal program operational hours unless otherwise stated in the contract.

- The combined total duration of available events in summer and winter seasons shall be no less than 120 hours per individual product excluding storage distributed energy resources, and PSE shall call up to 15 events per season.
- Capacity must be dispatchable with one of the following notification options: (1) hour ahead, (2) day ahead, or (3) a combination of hour ahead and day ahead.
- Bidder will incur damages for failing to deliver contracted and forecasted capacity during dispatch events. Bidder will also incur damages for failing to achieve monthly committed capacity targets as defined in the contract.
- PSE will only evaluate bids that provide capacity in both winter and summer seasons with equal capacity distributions across both seasons. Exceptions will be allowed for distributed energy resources/technologies with defined seasonality of usage.
- Bidder must provide measurement and evaluation plan. See Measurement and Verification section of this exhibit for an overview of PSE's preferences.
- Bidder must demonstrate the capability to dispatch resources at the feeder and/or substation level, along with custom-defined geographic territories.
- Bidder must provide a marketing plan or demonstrate the ability to enroll/onboard customers/sites through Uplight.
- Bidder must indicate whether they have an existing relationship with Uplight. Based on their experience with Uplight, Bidder must also describe the details of any single sign-on (SSO) implementation, including the standard (if any) adhered to and how it was implemented.
- Bidder must demonstrate a plan to achieve interconnection (if applicable).
- Bidder must demonstrate a capability to integrate with PSE's VPP, including but not limited to:
 - Receive event dispatch signals
 - Feed event performance data back to PSE, and if applicable PSE's VPP
 - Feed device telemetry back-to-back to PSE, and if applicable PSE's VPP
- Bidder must demonstrate a capability to manage a full end-to-end customer lifecycle for enrolled demand response customers
- Bidder must be able to provide data to PSE in the format identified in the Data Requirements section of this exhibit.

EXHIBIT G. DEMAND SIDE RESOURCES ADDENDUM**Distributed Energy Resources**

Distributed Energy Resources are resources that plan to interconnect on PSE's distribution system. To be eligible for this 2024 All-Source RFP, distributed energy resources, whether standalone or aggregated programs, must at least meet a 5 MW_{AC} nameplate threshold.⁵ In addition to meeting the minimum qualifying criteria for all proposals outlined in Exhibit B, Bidders proposing distributed energy resources must choose how they wish to be evaluated and also meet the associated minimum requirements specified below (in parenthesis):

- Variable energy resources (Exhibit B),
- Flexible capacity (Exhibit B),
- Energy storage (Exhibit B),
- As a demand response resource (this Exhibit G), or
- A combination of the above types.

Additionally, for all distributed energy resource types, the bidder must demonstrate a plan to achieve interconnection (if applicable).

Measurement and Verification

PSE will evaluate proposals on a variety of criteria including, but not limited to, demonstrated competence and experience, management structure and assigned personnel, quality of proposed equipment and services, pricing, performance guarantees, and other criteria as outlined in Exhibit A to this 2024 All-Source RFP.

PSE reserves the right to contact a Bidder at any time for clarifications about any part of the bidder's proposal. Proposal review questions and communications will focus on clarifying the information set forth by Bidder in the proposals and will not be an opportunity for Bidder to revise terms.

PSE prefers proposals that provide the lowest reasonable cost throughout the program or project life, taking into account the price of the proposal and other factors that impact PSE's overall cost. PSE intends to analyze the economic benefits of demand response proposals in a manner consistent with the integrated system planning processes.

PSE will evaluate bids as described in Exhibit A. The benefits and costs shown in the tables below will be included in the bid evaluation process when applicable, quantifiable, and significant. PSE

⁵ Qualified facilities with nameplate capacities of 5 MW or less may sell power to PSE pursuant to electric tariff rate Schedule 91.

EXHIBIT G. DEMAND SIDE RESOURCES ADDENDUM

prefers proposals and combinations of proposals that result in the lowest impact on PSE's revenue requirements and rates when included in PSE's existing generation resource portfolio.

PSE will adjust Bidder's proposed capacity during the evaluation process using effective load carrying capability ("ELCC") as shown in Table 3. The ELCC used in this evaluation will be dependent on the bidder's proposed resource availability, i.e., frequency and duration of events.

For the purposes of measurement and evaluation, Bidders will:

- Provide participant data (to PSE and third-party evaluator) from a sufficient sample of customers for purposes of estimating average load impacts.
- Be called upon to provide meter and payment data, calculation methodologies, and other relevant information related to enrolled participants.
- Conduct measurement and verification for estimation of load impacts (method to be agreed upon mutually with, and verified, by PSE and an independent contractor).

Table 2. *Cost-Effectiveness Benefits for DR Resources*

Benefits
Avoided capacity costs - System wide peak capacity - Local/Distribution peak capacity constraints (location specific)
Avoided energy costs - Alleviate consumption during short duration, high energy system supply cost periods - Events improve alignment between customer loads and available carbon-free generation
Avoided transmission and distribution costs - Possible transmission cost savings where event capacity delivery is firm - Location specific infrastructure upgrade deferrals ○ Substation Expansions ○ Feeder modifications ○ New substations
Avoided environmental compliance costs - Possible CETA compliance cost savings by shifting customer energy use to adjacent and available carbon-free generation periods

EXHIBIT G. DEMAND SIDE RESOURCES ADDENDUM

Table 3. *Costs for Demand Response Resources*

Costs
Program administrator expenses
Program administrator capital costs
DR measure cost: Program administrator
DR measure cost: Participant contribution
Participant transaction costs
Participant value of lost service
Increased energy consumption
Environmental compliance costs

Table 4. *ELCC Based on Frequency and Duration of Demand Response Events*

Peak Capacity Credit for Demand Response			
DEMAND RESPONSE	Capacity (MW)	Peak Capacity Credit Year 2027	Peak Capacity Credit Year 2031
Demand Response, 3-hr duration, 6-hr delay, 30 calls per year	100	26.0%	31.6%
Demand Response, 4-hr duration, 6-hr delay, 30 calls per year	100	32.0%	37.4%

Data Requirements

- Provide secure data uploads into PSE's data tracking system.
- Provide participant data from a sufficient sample of customers for the purposes of estimating average load impacts.

EXHIBIT G. DEMAND SIDE RESOURCES ADDENDUM

Table 5. *Data Support*

1. Customer Information System (“CIS”) and work management software	Describe your CIS and work management software, including how customer information is entered and updated, how scheduling of installations is accommodated, and how service requests and other necessary information are incorporated.
2. Interface requirements	Describe the process by which PSE’s system is updated or fed with real time information, such as load curtailment activity and other predefined fields. Also, describe processes for providing updates/reports.
3. Data sharing and reporting	Respond in detail to the following: • What types of information/data will be exchanged with PSE, and how will this data be transferred in a secure manner? Is it pulled, pushed on a time basis, or both? • What access will PSE staff have to account status, and what information will be available? • What types of status reporting will be provided to PSE, with what level of detail, and with what frequency? • What are your data retention policies? • What is your QA/QC process for ensuring that your customer data is correct and valid?
4. Reliability and backup	Describe the protections and recovery methods for dealing with unforeseeable events (e.g., acts of nature, computer or hard drive failure in the computing resources, or security breaches) that may compromise vital customer or work management data.
5. Testing approach	Describe how the data transfer processes will be tested initially and how they will be checked during the project to assure functionality and accuracy.

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Exhibit H. Energy Storage System Location Study



ENERGY STORAGE SYSTEM LOCATION STUDY UPDATE

Prepared by Robby Anderst, PE (Transmission Services Planning)
Sophie Pavletich, PE (Local Transmission System Planning)
Dan Rizzo, PE (Local Transmission System Planning)
Date: 17 June 2024

1. Introduction

In June 2021, an energy storage location study (“2021 study”¹) was performed on select substations to determine candidate stations for the interconnection of additional Energy Storage Systems (ESS) across Puget Sound Energy’s territory. This 2021 study was completed using study cases representing 2029-2030 Heavy Winter and 2030 Heavy Summer.

This study provides an update to the quantitative results of that report. The results in this study reflect updated cases representing 2032-2033 Heavy Winter and 2033 Heavy Summer, which reflect the most recent load forecasts and PSE system plans. In addition, the study cases for this addendum include all PSE queued generation that have completed System Impact Studies (SIS).

2. Methodology

The 2021 study employed two study methods, qualitative and quantitative. The qualitative method assessed substation bus configurations, number of lines in and out, expansion space, and available bays. The methodology was adjusted in this study to account for existing interconnection projects in queue and permitting or zoning challenges. The quantitative method of the 2021 study utilized PowerWorld’s ATC Tool² to obtain its results. This study leverages similar methodology to provide updates to those results.

3. Quantitative Method

The ATC Tool in PowerWorld was used to produce the quantitative results of this study. This tool allows you to determine the maximum MW that can be injected into or withdrawn from a substation without violating any thermal limits.

The ATC Tool requires the user to select a “buyer” and a “seller,” commonly referred to as source and sink.

- Generating: Subject substation bus was used for the “seller” and Area Northwest (40) was used for the “buyer”
- Charging: Area Northwest (40) was used for the “seller” and subject substation bus was used for the “buyer”

Study Criteria and Assumptions:

¹ The 2021 study can be found at: https://www.pse.com/-/media/PDFs/001-Energy-Supply/003-Acquiring-Energy/Exl2021-AllSource-RFP63021.pdf?sc_lang=en&rev=dc75adbd893417abfc0f2c31609ed4a&modified=20211115231310&hash=597F5F1439F5F422FE760606E3820065

² While the PowerWorld “ATC Tool” was used to perform this analysis, the values provided are reflective of interconnection capacity and do not reflect availability of transmission service.

- 2033 Heavy Summer (HS) and 2032-2033 Heavy Winter (HW) PowerWorld cases were utilized from PSE's 2023 Transmission Planning Assessment.
- All PSE queued generation projects that are electrically significant and have a completed SIS were included in the models. The projects accounted for an additional 3238 MW of generation in PSE's system. These prior queued projects are shown in Table 3.1 below.³

Table 3.1 Prior Queued Projects

Queue #	County	POI Substation	Service ⁴	MW Output
76	King	Christopher	ERIS	100
86	Whatcom	Portal Way	NRIS	100
87	Skagit	Fredonia	NRIS	100
98	Pierce	White River	NRIS	200
99	King	Talbot Hill	NRIS	250
100	Pierce	White River	NRIS	200
101	King	Berrydale	NRIS	200
102	Thurston	St. Clair	NRIS	150
103	Skagit	Sedro Woolley	NRIS	200
105	Skagit	Sedro Woolley	ERIS	200
109	Kitsap	South Bremerton	NRIS	200
112	Thurston/Lewis	Tono Area	NRIS	127
113	Thurston/Lewis	Tono Area	ERIS	218
114	Kitsap	South Bremerton Area	NRIS	218
121	King	Starwood	NRIS	123
124	Pierce	Frederickson	NRIS	85
125	Thurston/Lewis	Tono	NRIS	170
127	Skagit	Fredonia	NRIS	100
129	Kitsap	Foss Corner	NRIS	170
132	Thurston/Lewis	Tono Area	NRIS	127

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- Elements with Outage Transfer Distribution Factor (OTDF) < 5.0% & Power Transfer Distribution Factor (PTDF) < 5.0%⁵ were ignored.
- Limit Monitoring: Summer or Winter Emergency Rating at 100%
- Extreme & Protection System Failure contingencies were excluded from the study.

³ PSE's queue is made publically available at https://www.oasis.oati.com/woa/docs/PSEI/PSEIdocs/6.3.2024_-_Interconnection_Queue_.pdf

⁴ Energy Resource Interconnection Service (ERIS) and Network Resource Interconnection Service (NRIS) reflect the different types of interconnection service available to interconnection customers, as defined in PSE's Open Access Transmission Tariff.

⁵ The 2021 study ignored OTDF/PTDF under 3.0%. 5.0% is a common methodology utilized in studies and is used here.

- ERS projects were turned off for P1-P7 contingencies.

4. Qualitative and Quantitative Results

Tables 4.1, 4.2, and 4.3 list the results for the qualitative and quantitative analysis⁶. The orange and green designations for each substation are indicative of the qualitative results, where orange indicates that a substation is more likely to require significant network upgrades for interconnection or may encounter permitting or zoning issues that may make development in the area infeasible.

The generation & load limits reflect the quantitative results and are equivalent to the discharge/charge limit for the ESS at the listed station for TPL-001-5.1 P0-P7 conditions (with the most limiting element). Substations resulting in negative capacity were adjusted to zero, which signifies existing overloads and cannot support additional generation or load without network upgrades. The P0 results presented in Table 4.1 reflect the MW limits of each station assuming an ERS interconnection. The P1-P7 results in Table 4.2 reflect the MW limits of each station assuming an NRS interconnection. Table 4.3 includes the combined results.

It is important to note that charge limits assume charging at peak load. It is the responsibility of the ESS developer to specify the conditions under which a resource is expected to charge, which could significantly impact the ability of a substation to accommodate that resource.

⁶ Results are based on information available as of June 17th, 2024.

Table 4.1 P0 Qualitative and Quantitative Results

Qualitative and Quantitative Results - P0 Results in MW							
Substation	County	2033 HS		2032-2033 HW		Maximum ESS Size	
		Generating	Charging	Generating	Charging	Generating	Charging
Alderton	Pierce	388	(535)	886	(1064)	388	(535)
Bellingham	Whatcom	587	(846)	814	(1107)	587	(846)
Berrydale	S. King	1251	(1352)	3025	(1871)	1251	(1352)
March Point	Skagit	376	(399)	285	(418)	285	(399)
Midway	S. King	468	(223)	593	(349)	468	(223)
O'Brien	S. King	463	(605)	483	(787)	463	(605)
S. Bremerton	Kitsap	1530	(372)	1952	(493)	1530	(372)
Saint Clair	Thurston	795	(1271)	1186	(1497)	795	(1271)
Sammamish	N. King	1500	(469)	1721	(1487)	1500	(469)
Christopher	S. King	526	(254)	716	(744)	526	(254)
Frederickson	Pierce	401	(270)	369	(454)	369	(270)
Fredonia	Skagit	376	(851)	271	(920)	271	(851)
Krain Corner	S. King	297	(148)	576	(279)	297	(148)
Lake Tradition	N. King	576	(196)	889	(550)	576	(196)
Starwood	S. King	295	(240)	494	(478)	295	(240)
Tono	Lewis/Thurston	130	(1052)	200	(1136)	130	(1052)
White River	Pierce	2055	(849)	2183	(1507)	2055	(849)
Portal Way	Whatcom	410	(397)	480	(636)	410	(397)
Sedro Woolley	Skagit	569	(620)	290	(790)	290	(620)
Talbot Hill	S. King	3861	(1281)	4744	(2919)	3861	(1281)

Table 4.2 P1 – P7 Qualitative and Quantitative Results

Qualitative and Quantitative Results - P1-P7 Results in MW							
Substation	County	2033 HS		2032-2033 HW		Maximum ESS Size	
		Generating	Charging	Generating	Charging	Generating	Charging
Alderton	Pierce	0	(258)	431	(431)	0	(258)
Bellingham	Whatcom	0	0	34	0	0	0
Berrydale	S. King	146	0	210	(501)	146	0
March Point	Skagit	0	0	34	0	0	0
Midway	S. King	221	0	280	(172)	221	0
O'Brien	S. King	199	(5)	288	(350)	199	(5)
S. Bremerton	Kitsap	614	0	508	0	508	0
Saint Clair	Thurston	0	(107)	256	0	0	0
Sammamish	N. King	0	0	468	0	0	0
Christopher	S. King	324	(102)	384	(365)	324	(102)
Frederickson	Pierce	0	0	0	(261)	0	0
Fredonia	Skagit	0	(497)	34	(472)	0	(472)
Krain Corner	S. King	0	0	43	0	0	0
Lake Tradition	N. King	46	0	570	0	45.8	0
Starwood	S. King	65	(151)	198	(221)	65	(151)
Tono	Lewis/Thurston	0	0	0	(825)	0	(825)
White River	Pierce	655	(459)	1121	(576)	655	(459)
Portal Way	Whatcom	0	(304)	0	(202)	0	(202)
Sedro Woolley	Skagit	0	0	0	(304)	0	0
Talbot Hill	S. King	675	0	1307	(770)	675	0

Table 4.3 Combined P0 – P7 Qualitative and Quantitative Results

Combined Qualitative and Quantitative Results in MW											
Substation	County	P0 Results				P1 - P7 Results				Maximum ESS Size	
		2033 HS		2032-2033 HW		2033 HS		2032-2033 HW			
		Generating	Charging	Generating	Charging	Generating	Charging	Generating	Charging	Generating	Charging
Alderton	Pierce	388	(535)	886	(1064)	0	(258)	431	(431)	0	(258)
Bellingham	Whatcom	587	(846)	814	(1107)	0	0	34	0	0	0
Berrydale	S. King	1251	(1352)	3025	(1871)	146	0	210	(501)	146	0
March Point	Skagit	376	(399)	285	(418)	0	0	34	0	0	0
Midway	S. King	468	(223)	593	(349)	221	0	280	(172)	221	0
O'Brien	S. King	463	(605)	483	(787)	199	(5)	288	(350)	199	(5)
S. Bremerton	Kitsap	1530	(372)	1952	(493)	614	0	508	0	508	0
Saint Clair	Thurston	795	(1271)	1186	(1497)	0	(107)	256	0	0	0
Sammamish	N. King	1500	(469)	1721	(1487)	0	0	468	0	0	0
Christopher	S. King	526	(254)	716	(744)	324	(102)	384	(365)	324	(102)
Frederickson	Pierce	401	(270)	369	(454)	0	0	0	(261)	0	0
Fredonia	Skagit	376	(851)	271	(920)	0	(497)	34	(472)	0	(472)
Krain Corner	S. King	297	(148)	576	(279)	0	0	43	0	0	0
Lake Tradition	N. King	576	(196)	889	(550)	46	0	570	0	46	0
Starwood	S. King	295	(240)	494	(478)	65	(151)	198	(221)	65	(151)
Tono	Lewis/Thurston	130	(1052)	200	(1136)	0	(107)	0	(825)	0	(107)
White River	Pierce	2055	(849)	2183	(1507)	655	(459)	1121	(576)	655	(459)
Portal Way	Whatcom	410	(397)	480	(636)	0	(304)	0	(202)	0	(202)
Sedro Woolley	Skagit	569	(620)	290	(790)	0	0	0	(304)	0	0
Talbot Hill	S. King	3861	(1281)	4744	(2919)	675	0	1307	(770)	675	0

5. Conclusions and Recommendations

All of the results included consideration of planned projects identified in the 2023 PSE Plan⁷ as well as the existing interconnection projects in queue that have completed System Impact Studies. In some cases, substations have been classified as orange on the list of recommended sites because of the challenging nature of the terrain in some of these locations, substation expansion would likely be very costly or could potentially be infeasible; therefore, it is not a site that PSE would recommend pursuing.

The 2021 study reflected the opportunity to interconnect ESS at several PSE stations without undue impact (or required network upgrades). While there is still some opportunity for additional capacity on PSE's system, requests in PSE's generation queue have utilized much of the availability shown in the 2021 report. These requests in the interconnection queue also impact substation configurations and remaining available expansion space.

⁷ The PSE Plan is publicly posted on OASIS at https://www.oasis.oati.com/woa/docs/PSEI/PSEIdocs/PSE_Plan_2023_Final.pdf

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit I. PSE Customer Consent Letter

EXHIBIT I. PSE CUSTOMER CONSENT LETTER

PSE Customer Consent Letter

_____ (“Customer”) hereby voluntarily authorizes Puget Sound Energy’s (“PSE”) transmission department (“PSE Transmission”) to share interconnection, transmission, and metering information with PSE’s marketing function employees, including but not limited to those in PSE’s energy supply merchant department (“PSE Merchant”):

All information, including interconnection and transmission information, related to Customer’s existing or proposed generating facility, as well as its integration into PSE transmission system.

PSE Transmission has not provided any preferences, either operational or rate-related, to Customer in exchange for Customer’s authorization and consent to share interconnection information.

Customer understands that this authorization and consent shall be posted on PSE’s OASIS website (<https://www.oasis.oati.com/psei/index.html>).

Customer

By: _____

Its: _____

Date: _____

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit J-1. Prototype Clean Energy PPA Term Sheet

TERM SHEET: RENEWABLE ENERGY PPA

This preliminary non-binding term sheet is not intended to set forth any binding obligations on any party. The proposed transaction is conditioned upon mutually agreeable negotiation and execution of one or more definitive agreements, the approval of such agreements by the respective board of directors of each party, and the satisfaction of closing conditions contained in such definitive agreements. This preliminary non-binding term sheet does not by itself create or imply any legal rights or obligations between the parties or any other person, including without limitation any obligation to engage in negotiations or discussions or any exclusivity period for such negotiations or discussions. This preliminary non-binding term sheet may not cover all essential terms and conditions of the proposed transaction. This preliminary non-binding term sheet does not constitute a binding contract and the parties do not intend to be legally bound unless and until definite agreements have been executed. Unless and until definitive agreements have been executed, either party is free to terminate further negotiations at any time.

Purchaser	Puget Sound Energy Inc.
Seller	[.....]
Project Name	[.....]
Project Location	[.....]
Nameplate	[.....] MW _{AC 300} / [.....] MW _{DC}
Contract Size	[.....] MW _{AC} (Point of Interconnection limit)
Product	All Delivered Energy and Attributes as generated as a bundled product.
Contract Rate	[.....]/MWh, fixed, as delivered.
Point of Delivery	[.....]
Delivery Term	[.....] years
Guaranteed Commercial Operation Date (GCOD) / Contract Term Start Date	[.....]
Test Energy	75% of contract rate, 50% if after GCOD.
Generation Attributes	Seller shall qualify and pay for registration and reporting of all generation attributes existing as of contract Effective Date. Seller shall pay up to \$50,000 in any contract year for the cost to qualify and report any new Generation Attributes that come in existence after the Contract Effective Date, or due to changes in Applicable Law.
Capacity Attributes	Seller shall comply and register with WRAP and any other registry for attributes that Purchaser requests. Seller shall pay 100% of replacement cost for failure to deliver Attributes. Replacement Renewable Energy Credits “bundled” with energy as necessary to satisfy CETA.
Title and Risk of Loss	Title and Risk of Loss to Delivered Energy passes from Seller to Purchaser at Delivery Point.

	Title and Risk of Loss with respect to Attributes not capable of being delivered to Delivery Point passes from Seller to Purchaser when Attributes first come into existence.
Interconnection	Seller responsible for meeting all interconnection requirements of the Interconnection Agreement Counterparty(ies). Seller responsible at its sole cost for putting into place all required metering, telemetry, communication systems and other technical requirements under the Interconnection Agreement. <i>[If applicable]</i> Seller responsible for all systems and technical requirements under Interconnection Agreement to pseudo-tie to Purchaser's balancing area.
Transmission	Seller responsible for arranging for all transmission services required up to the Delivery Point. <i>[Unless transmission service rights are assigned to PSE],</i> Seller responsible for payment of any charges for transmission or wheeling services, ancillary services, control area services, congestion charges, location marginal pricing differentials, transaction charges and line losses ("<u>Transmission Charges</u>") up to and at the Delivery Point. Purchaser responsible for transmission service and associated charges from and after Delivery Point.
Scheduling and Balancing	Seller responsible for arranging all scheduling services up to and at the Delivery Point and delivering scheduled energy on an hourly firm basis. Seller responsible for all costs and charges, including imbalance charges arising prior to or at the Delivery Point. Purchaser responsible for arranging scheduling services at after Delivery Point, and all costs and charges. Seller shall utilize forecasting service designated by Purchaser. Seller shall provide necessary forecast data to Purchaser to meet Purchasers reliability coordinator, balancing authority and market requirements/obligations. Seller shall provide Purchaser historical meteorological and generation data and access to Seller's SCADA historian for Project performance information as reasonably requested.
Seller Curtailment	Seller shall curtail as required by Purchaser Voluntary Curtailment Order or System Curtailment Order, or as otherwise directed by Transmission Provider or Balancing Authority Seller may curtail for as long reasonably necessary for Planned Outage or Forced Outage
Purchaser Voluntary Curtailment	In the event of an instruction from Purchaser to Seller to reduce generation for reasons unrelated to a System Curtailment Order, a Force Majeure event or an outage on the Transmission System, Purchaser shall pay Seller:

	• [Contract Rate] x [Deemed Delivered Energy]. Seller shall use reasonable efforts to sell generated energy during any Purchaser Voluntary Curtailment at the best price reasonably available in the market. Any revenue from such sales shall be offset against amounts otherwise due by Purchaser. No credit or true-up for energy sold at negative price. Purchaser entitled to Attributes associated with Delivery Energy during any period of Purchaser Voluntary Curtailment. No obligation of Purchaser to make report with respect to the CCA during any Purchaser Voluntary Curtailment
System Curtailment	An instruction from a Transmission Provider or any other entity having authority, now or in the future, over the transmission system (e.g., a reliability coordinator, Balancing Authority, independent system operator, distribution operator, etc.) to reduce generation from the Project. Curtailment orders issued by any Transmission Provider are System Curtailment Orders and not Purchaser Voluntary Curtailment Orders. Parties shall use commercially reasonable efforts to mitigate the adverse effects of such action or order, including the sale of Energy to third parties.
Pre-COD Milestones and Delay Liquidated Damages	If either Target Construction Start Date or Guaranteed COD is not met, Seller shall pay daily delay liquidated damages of \$500 x Planned Nameplate Capacity (MW_{AC}). Target Construction Start Date and Guaranteed COD may be extended by up to 180 days due to Force Majeure or Interconnection Delays in aggregate.
Early Termination and Pre-COD Termination Payment	Failure to achieve Target Construction Start Date within 90 days or GCOD within 180 days are events of default, with PSE right to terminate PPA and collect Pre-COD termination payment. Pre-COD termination payment: \$100,000 per MW of Planned Nameplate Capacity, <i>plus</i> any delay LDs paid or payable by Seller.
Final Nameplate and Capacity Buydown	Seller shall not be permitted to achieve COD unless the Final Nameplate Capacity equals or exceed 95% of Planned Nameplate Capacity. If Final Nameplate Capacity is less than 100% of Planned Nameplate at COD, Seller has 180 days to install additional capacity to reach Planned Nameplate, or shall make a one-time liquidated damages payment to Purchaser of (\$250,000/MW_{AC}) for each MW_{AC} below Planned Nameplate.
Credit Support	Seller to provide credit support in the form of either a) a parental guarantee with investment grade credit rating or otherwise b) credit support in the form of a letter of credit equal to \$100,000/MW_{AC} <i>plus</i> maximum delay LDs at \$500/day/per MW_{AC} up to 180 days.

	Commencing with COD and throughout Term, Seller shall maintain Credit Support of \$100,000 per MW _{AC} of Final Nameplate Capacity
Performance Guarantees	Guaranteed Availability Factor: 90%. If Availability Factor in any Availability Period is below 90%, Seller shall pay damages to Purchaser equal to: [Availability Shortfall x Expected Energy x Damages Rate (Average Energy Value + Average Environmental Attribute Value - Contract Rate)]. Purchaser may terminate if Seller fails to achieve an Average Availability Factor of at least 85% in any 2 consecutive Contract years.
Energy Imbalance Market	Seller to cause Project to be designated as a participating resource in the EIM. Seller shall pay all costs associated with compliance by Seller under Interconnection Agreement.
Labor	Seller shall (i) satisfy the Prevailing Wage Requirements and Apprenticeship Requirements applicable to the Project and (ii) execute an engineering, procurement and construction ("EPC") contract for the Project that Washington Administrative Code, Title 296, Chapter 140 ("WAC 296-140"), which requires that the EPC contractor utilize a Project Labor Agreement, Community Workforce Agreement or Collective Bargaining Agreement, as applicable, in a reasonable and customary form, for major construction activities associated with the construction of the Project, and (iii) satisfy the requirements of Washington House Bill 1589 ("HB 1589") as related to the Project.
Assignment by Seller	Assignee or transferee must have a minimum of 3 years' experience in [wind/solar] energy generation and operation, including owning, controlling or operating a minimum of [___MW] of [wind/solar] energy generation capacity, or having a long-term contractual arrangement at least 3 years with an operator for the Project meeting such requirements.
Insurance	Seller shall maintain the following insurance: - Worker Compensation: \$1 million bodily injury by accident/disease per accident/employee - Commercial General Liability: \$1 million/occurrence, \$2 million aggregate - Commercial Automobile Insurance: \$1 million/accident - Umbrella Excess Liability Coverage: \$10 million/occurrence and \$10 million annual aggregate. - Builders All-Risk Insurance: Minimum limit based on the total replacement cost of the Project - All-risk Property Insurance: Covering physical loss or damage to the Project with minimum limits based on the total replacement cost of the Project

	• Professional Liability Insurance: Seller and/or all its contractors (including subcontractors) shall have professional liability coverage with aggregate limit at least \$3,000,000. • Business Interruption Insurance: Covering Seller's expenses resulting from full interruption for 6 calendar months and a time deductible of no more than 60 Days. • Pollution liability insurance: covering liability arising out of activities under the PPA or required by federal, state, regional, municipal and local laws, with minimum limits \$2,000,000 per occurrence, and \$2,000,000 in aggregate.
Other Material Changes	Please describe any other material changes made to proposed standard contract.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit J-2. Prototype Tolling Agreement Term Sheet

TERM SHEET: BESS TOLLING AGREEMENT

(ALSO INDICATIVE FOR EXPECTED TERMS OF OTHER TYPES OF CAPACITY)

This preliminary non-binding term sheet is not intended to set forth any binding obligations on any party. The proposed transaction is conditioned upon mutually agreeable negotiation and execution of one or more definitive agreements, the approval of such agreements by the respective board of directors of each party, and the satisfaction of closing conditions contained in such definitive agreements. This preliminary non-binding term sheet does not by itself create or imply any legal rights or obligations between the parties or any other person, including without limitation any obligation to engage in negotiations or discussions or any exclusivity period for such negotiations or discussions. This preliminary non-binding term sheet may not cover all essential terms and conditions of the proposed transaction. This preliminary non-binding term sheet does not constitute a binding contract and the parties do not intend to be legally bound unless and until definite agreements have been executed. Unless and until definitive agreements have been executed, either party is free to terminate further negotiations at any time.

Customer	Puget Sound Energy Inc.
Service Provider	[.....]
Project Name	[.....]
Project Location	[.....]
Energy Storage Capacity	[.....] MWh
Power Delivery	[.....] MW _{AC} (Point of Interconnection limit)
Storage Service	All Delivered Energy and Attributes as generated as a bundled product. Service Provider provides capacity, energy shifting and ancillary services including frequency and voltage regulation. Service provider will register and maintain qualification for all attributes existing at the Effective Date, up to \$50k per year. 365 cycles per year, max 2 per day, partial cycles allowed 0 – 100% SOC, 30-70% Annual Average SOC Up to 100 banked cycles for use following Contract Year
Contract Price	[.....]/kW-month
Point of Delivery	[.....]
Service Term	[.....] years
Guaranteed Commercial Operation Date (GCOD)	[.....] (also the expected Contract Term Start Date)
Generation Attributes	Service Provider shall qualify and pay for registration and reporting of all generation attributes existing as of contract Effective Date. Service Provider shall pay up to \$50,000 in any contract year for the cost to qualify and report any new Generation Attributes that come in existence after the Contract Effective Date, or due to changes in Applicable Law.

Capacity Attributes	Service Provider shall comply and register with WRAP and any other registry for Attributes that Customer requests. Service Provider shall pay 100% of replacement cost for failure to deliver Attributes.
Title and Risk of Loss	PSE retains title and risk of loss to all Energy at all times. Service Provider has exclusive control, possession and risk of damage or injury after delivery of Charging Energy at the Interconnection Point until the Discharge Energy is redelivered to the Interconnection Point.
Interconnection	Service Provider responsible for meeting all interconnection requirements of the Interconnection Agreement Counterparty. Service Provider responsible at its sole cost for putting into place all required metering, telemetry, communication systems and other technical requirements under the Interconnection Agreement. <i>[If applicable]</i> Service Provider responsible for all systems requirements under Interconnection Agreement to pseudo-tie to Customer's balancing area.
Transmission	Service Provider responsible for arranging for all transmission services required up to the Delivery Point. <i>[Unless transmission service rights are assigned to PSE],</i> Service Provider responsible for payment of any charges for transmission or wheeling services, ancillary services, control area services, congestion charges, location marginal pricing differentials, transaction charges and line losses ("<u>Transmission Charges</u>") up to and at the Delivery Point. Customer responsible for transmission service and associated charges from and after Point of Delivery.
Pre-COD Milestones and Delay Liquidated Damages	If either Target Construction Start Date or Guaranteed COD is not met, Service Provider shall pay daily delay liquidated damages of \$500 x Planned Nameplate Capacity (MW_{AC}). Target Construction Start Date and Guaranteed COD may be extended by up to 180 days due to Force Majeure or Interconnection Delays in aggregate.
Early Termination and Pre-COD Termination Payment	Failure to achieve Target Construction Start Date within 90 days or GCOD within 180 days are events of default, with PSE right to terminate Agreement and collect Pre-COD termination payment. Pre-COD termination payment: \$100,000 per MW of Planned Nameplate Capacity, <i>plus</i> any delay LDs paid or payable by Service Provider.

Bidder to fill in and propose markups to term sheet

Contract Capacity and Liquidated Damages	Service Provider shall not be permitted to achieve COD unless the Contract Capacity determined by a Performance Test equals or exceed 95% of Planned Nameplate Capacity. If Contract Capacity is less than 100% of Planned Nameplate Capacity at COD, Service Provider has 60 days to install additional capacity to reach Planned Nameplate Capacity, or make a one-time liquidated damages payment to Customer of \$250,000/ MW_{AC} for each MWAC below Nameplate Capacity.
Storage Payment	Contract Price x Effective Capacity x Availability Adjustment <i>minus</i> Roundtrip Efficiency Adjustment <i>minus</i> Max(Capacity Adjustment, Discharge Spread) <i>minus</i> Sharing Event Liquidated Damages Any FM >24 hours during which charge cannot be received nor delivered, the monthly Storage Payment shall be reduced on a pro rata basis.
Availability Adjustment	$100 - (\text{Guaranteed Availability} - \text{Actual Availability})$ Year 1: Guarantee 95%; Y2+: Guarantee 98.5% Actual Availability calculates uptime excluding Planned Outages $\frac{H - EF - TP - FM}{H - TP - FM}$ H = Total Number of Hours in the applicable Contract Year; EF = Equivalent Forced Outage Hours in the applicable Contract Year TP = Total Effective Planned Outage Hours in the applicable Contract Year FM = Total Force Majeure Hours in the applicable Contract Year Planned Outages capped at 200 hours per year.
Roundtrip Efficiency	$RTE_{Adj} = [1 - (RTE / RTEG)] \times (MWh_{actual} \times \text{Average DA Mid-C Peak Price} \times 1.3)$ RTE – Actual roundtrip efficiency determined in most recent Performance Test RTEG – Guaranteed RTE (defined per Contract Year) MWh_{Actual} – Sum of Charging Energy for a month
Capacity Adjustment and Discharge Spread	Capacity Ratio = Effective Capacity / Contract Capacity CR >96% - No adjustment

	96> CR $\geq$ 90% - $\text{Max}(\text{Contract Price, Monthly CONE}) \times \text{Missing Capacity} \times 1.25$ 90> CR - $\text{Max}(\text{Contract Price, Monthly CONE}) \times \text{Missing Capacity} \times 2.5$ Monthly CONE – Cost of New Entry from WRAP program If actual energy delivery is +/-2% different from Discharge Notice in an hour, Service Provider shall pay per hour: Discharge Spread Adjustment = $(\text{Discharge Notice} - \text{Actual Discharge}) \times (\text{Average DA Mid-C Peak} \times 1.3)$
Sharing Event Liquidated Damages (WRAP)	PSE assigned Energy Delivery Failure <i>and</i> project fails to deliver consistent with Discharge Notice $(\text{Average DA Mid-C Peak} \times 1.3) \times (\text{Discharge Notice} - \text{Actual Discharge})$
Credit Support	Seller to provide credit support in the form of either a) a parental guarantee with investment grade credit rating or otherwise b) credit support in the form of a letter of credit equal to \$100,000/MW_{AC} <i>plus</i> maximum delay LDs at \$500/day/per MW_{AC} up to 180 days. Commencing with COD and throughout Term, Seller shall maintain Credit Support of \$100,000 per MW_{AC} of Final Nameplate Capacity
Labor	Service Provider shall (i) satisfy the Prevailing Wage Requirements and Apprenticeship Requirements applicable to the Project and (ii) execute an engineering, procurement and construction (“EPC”) contract for the Project that Washington Administrative Code, Title 296, Chapter 140 (“WAC 296-140”), which requires that the EPC contractor utilize a Project Labor Agreement, Community Workforce Agreement or Collective Bargaining Agreement, as applicable, in a reasonable and customary form, for major construction activities associated with the construction of the Project, and (iii) satisfy the requirements of Washington House Bill 1589 (“HB 1589”) as related to the Project.
Assignment by Service Provider	Assignee or transferee must have a minimum of 3 years’ experience in BESS operation, including owning, controlling or operating a minimum of 500 MW of BESS capacity, or having a long-term contractual arrangement of at least 3 years with an operator for the Project meeting such requirements.
Insurance	Service Provider shall maintain the following insurance: • Worker Compensation: \$1 million bodily injury by accident/disease per accident/employee • Commercial General Liability: \$1 million/occurrence, \$2 million aggregate • Commercial Automobile Insurance: \$1 million/accident • Umbrella Excess Liability Coverage: \$10 million/occurrence and \$10 million annual aggregate.

Bidder to fill in and propose markups to term sheet

	• Builders All-Risk Insurance: Minimum limit based on the total replacement cost of the Project • All-risk Property Insurance: Covering physical loss or damage to the Project with minimum limits based on the total replacement cost of the Project • Professional Liability Insurance: Service Provider and/or all its contractors (including subcontractors) shall have professional liability coverage with aggregate limit at least \$3,000,000. • Business Interruption Insurance: Covering Service Provider's expenses resulting from full interruption for 6 calendar months and a time deductible of no more than 60 Days. • Pollution liability insurance: covering liability arising out of activities under the Agreement or required by federal, state, regional, municipal and local laws, with minimum limits \$2,000,000 per occurrence, and \$2,000,000 in aggregate.
Other Material Changes	Please describe any other material changes made to proposed standard contract.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit J-3. Prototype Membership Interest Purchase Agreement (MIPA) Term Sheet

TERM SHEET: MEMBERSHIP INTEREST PURCHASE AGREEMENT

This preliminary non-binding term sheet is not intended to set forth any binding obligations on any party. The proposed transaction is conditioned upon mutually agreeable negotiation and execution of one or more definitive agreements, the approval of such agreements by the respective board of directors of each party, and the satisfaction of closing conditions contained in such definitive agreements. This preliminary non-binding term sheet does not by itself create or imply any legal rights or obligations between the parties or any other person, including without limitation any obligation to engage in negotiations or discussions or any exclusivity period for such negotiations or discussions. This preliminary non-binding term sheet may not cover all essential terms and conditions of the proposed transaction. This preliminary non-binding term sheet does not constitute a binding contract and the parties do not intend to be legally bound unless and until definite agreements have been executed. Unless and until definitive agreements have been executed, either party is free to terminate further negotiations at any time.

Buyer	Puget Sound Energy Inc.
Seller	[.....]
Project Company	[.....]
Facility Name	[.....]
Facility Location	[.....]
Planned Nameplate [Power] Capacity	[.....] MW _{AC} (Point of Interconnection limit)
[Storage only] Energy Storage Capacity	[.....] MWh
Transaction Type	Purchase of 1) near construction-ready Project with associated major supply agreements ready for execution, and minimum of three balance of plant contractor (BoP) proposals 2) purchase of real estate rights related to the project, and 3) purchase of any transmission or interconnect service queue positions or other transmission or interconnect assets pertinent to the project
% of Membership Interests Purchased	[.....] %
Point of Delivery	[.....]
Closing Date and Outside Date	[.....]
Commercial Operation Date (COD)	[.....]
Contract Price	[\$.....]
Payment Schedule	Closing Date = [.....] % NTP = [.....] % Substantial Completion = [.....] %
Ready for Notice to Proceed (NTP)	• Ready-to-execute construction agreement, major technology supply agreement(s) and relevant service agreement(s) • Requisite environmental, historical, and engineering assessments and studies

Bidder to fill in and propose markups to term sheet

	• Closing Required Permits (final versions, not subject to challenge nor appeal) • Current estoppels in connection with all leasehold and easement interests in Real Property • No change to the leases covering the Real Property as of the Execution Date
Closing Conditions	In addition to other customary Closing Conditions, • Ready for NTP • As applicable, transmission rights secured, and executed Transmission Letter Agreement(s) between Buyer and Seller
Title	Seller to deliver title policy to Buyer, free of all encumbrances or exceptions, and an ALTA/NSPS survey of the Real Property
Right to Terminate	In addition to other customary Termination terms, • Either Seller or Buyer breach causes delay after the Outside Date
Other Material Changes	Please describe any other material changes made to proposed standard contract.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit J-4. Prototype Build Transfer Agreement (BTA) Term Sheet

TERM SHEET: BUILD TRANSFER AGREEMENT

This preliminary non-binding term sheet is not intended to set forth any binding obligations on any party. The proposed transaction is conditioned upon mutually agreeable negotiation and execution of one or more definitive agreements, the approval of such agreements by the respective board of directors of each party, and the satisfaction of closing conditions contained in such definitive agreements. This preliminary non-binding term sheet does not by itself create or imply any legal rights or obligations between the parties or any other person, including without limitation any obligation to engage in negotiations or discussions or any exclusivity period for such negotiations or discussions. This preliminary non-binding term sheet may not cover all essential terms and conditions of the proposed transaction. This preliminary non-binding term sheet does not constitute a binding contract and the parties do not intend to be legally bound unless and until definite agreements have been executed. Unless and until definitive agreements have been executed, either party is free to terminate further negotiations at any time.

Buyer	Puget Sound Energy Inc.
Seller	[.....]
Facility Name	[.....]
Facility Location	[.....]
Project Company	[.....]
Planned Nameplate [Power] Capacity	[.....] MW _{AC} (Point of Interconnection limit) [.....] MW _{AC} (Planned Capacity)
[Storage only] Energy Storage Capacity	[.....] MWh
Product	A fully-built and commissioned Generating Facility.
Management Services post-Closing	Construction and Project Management through Final Completion. Seller is fully responsible for causing the Generating Facility to achieve Substantial Completion and Final Acceptance
% of Membership Interests Purchased	100%. <i>If partial ownership contemplated, please explain.</i>
Point of Delivery	[.....]
Closing Date	At Mechanical Completion
Guaranteed Commercial Operation Date (GCOD)	[.....]
Contract Price	[\$.....]
Payment Structure	Seller makes all payments required for construction through Final Completion
Payment Schedule	Closing Date (Mechanical Completion) = []% Substantial Completion = []% - Punch List Holdback Final Completion = []% + Punch List Holdback
[Battery Storage Only] Operational Parameter	<i>At minimum:</i> 365 cycles per year, max 2 per day, partial cycles allowed 0 – 100% SOC, 30-70% Annual Average SOC Up to 100 banked cycles for use following Contract Year
Title; Risk of Loss; and Care, Custody, and Control	Seller to ensure EPC and Major Suppliers transfer titles to the Project Company free of all encumbrances.

Bidder to fill in and propose markups to term sheet

	Seller to ensure EPC to hold risk of loss, and care, custody, and control, of work and all equipment. Developer to ensure EPC to pass these to the Project Company as of Substantial Completion.
Interconnection	Seller responsible for meeting all interconnection requirements of the Interconnection Agreement Counterparty. Seller responsible for putting into place all required metering, telemetry, communication systems and other technical requirements under the Interconnection Agreement. <i>[If applicable]</i> Seller responsible for all systems requirements under Interconnection Agreement to pseudo-tie to Customer's balancing area.
Transmission	Seller responsible for arranging for all transmission services required up to the Delivery Point.
Firm Date Conditions and Full Notice to Proceed	In addition to other customary Firm Date Conditions, • [Major Generation Equipment Supply] finalized; • EPC Agreement (that is executed or execution ready); • LGIA (that is execution ready); • Receipt of all discretionary permits as outlined in final and unappealable form and substance satisfactory to Buyer • Final Price mutually agreed by the Parties. • Reps and Warranties are true and correct in all material respects • No Material Adverse Changes • Agreement on Title Policy Full Notice to Proceed to be issued within five (5) Business Days following the later of (a) the execution of the EPC Contract and (b) the Firm Date.
Closing Conditions	In addition to other customary Closing Conditions, • [For projects using ITC] Project achieved Mechanical Completion, and not synchronized to the electrical transmission system • Receipt of all permits as outlined in final and unappealable form and substance satisfactory to Buyer • Seller shall transfer to Buyer all transmission service rights from Project to the POD. • Reps and Warranties are true and correct in all material respects • No Material Adverse Changes • Agreement on Title Policy
Pre-COD Milestones and Delay Liquidated Damages	If either Guaranteed Mechanical Completion or Guaranteed COD is not met, Seller shall pay daily delay liquidated damages of \$500 x Planned Nameplate Capacity (MW_{AC}). Guaranteed Mechanical Completion and Guaranteed COD may be extended by up to 180 days due to Force Majeure or Interconnection Delays in aggregate.

Bidder to fill in and propose markups to term sheet

Early Termination and Pre-COD Termination Payment	Among other customary default terms, failure to achieve Mechanical Completion or GCOD within 180 days are events of default, with PSE right to terminate Agreement and collect Pre-COD termination payment of \$100,000 per MW of Planned Nameplate Capacity, <i>plus</i> any delay LDs paid or payable by Seller.
Contract Capacity and Liquidated Damages	Seller shall not be permitted to achieve Substantial Completion unless the Contract Capacity determined by a Performance Test equals or exceed 95% of Planned Nameplate Capacity.
Warranty Terms	To be discussed • Minimum two years EPC warranty • Minimum two years major equipment warranties • Buyer review of major equipment warranties (prior to procurement for equipment not yet procured)
Labor	Seller shall (i) satisfy the Prevailing Wage Requirements and Apprenticeship Requirements applicable to the Project and (ii) execute an engineering, procurement and construction (“EPC”) contract for the Project that Washington Administrative Code, Title 296, Chapter 140 (“WAC 296-140”), which requires that the EPC contractor utilize a Project Labor Agreement, Community Workforce Agreement or Collective Bargaining Agreement, as applicable, in a reasonable and customary form, for major construction activities associated with the construction of the Project, and (iii) satisfy the requirements of Washington House Bill 1589 (“HB 1589”) as related to the Project.
Assignment by Seller	Assignment allowable only with Buyer’s consent.
Credit Support	Seller to provide credit support in the form of a) a parental guarantee with investment grade credit rating or otherwise and b) credit support in the form of a letter of credit equal to (1) \$ 200,000/MW _{AC} of Planned Nameplate Capacity prior to Closing Date and (2) \$100,000/MW _{AC} of Planned Nameplate after Closing Date. Letter of credit support to be sized at a minimum to match pre-COD Termination Payment plus maximum daily delay liquidated damages.
Other Material Changes	Please describe any other material changes made to proposed standard contract.

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit K-1. Form Power Purchase Agreement (PPA)

Confidential

For reference only.

PSE is not requesting a redlined form agreement as part of a bidder's RFP proposal.

This working draft is subject to change, does not constitute a binding offer, shall not form the bases for an agreement by estoppel nor otherwise, and is conditioned upon each party's receipt of all required management approvals (including final credit and legal approval) and all regulatory approvals. Any action taken by a party in reliance on the terms set forth in this working draft or on statements made during negotiations pursuant to this working draft shall be at that party's own risk. Until this agreement is negotiated, approved by management, executed, delivered and approved by all required regulatory bodies, no party shall have any other legal obligations, expressed or implied, or arising in any other manner under this working draft or in the course of negotiations.

[PROJECT NAME]

POWER PURCHASE AGREEMENT

between

PUGET SOUND ENERGY, INC.

as Purchaser

and

[_____]

as Seller

dated as of

[____], 20[__]

[_____] COUNTY, [_____]

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Confidential

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this “Agreement”) is made this [] day of [], 2024 (the “Effective Date”), by and between Puget Sound Energy, Inc., a Washington corporation (“Purchaser”) and [], a [] (“Seller”). Purchaser and Seller are each individually referred to herein as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Seller is developing a [] energy project on a site located in [] County, []; and

WHEREAS, Seller desires to sell, and Purchaser desires to purchase and receive, the Delivered Energy and the Attributes from the Project (as defined below), on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 GENERAL TERMS AND CONDITIONS

1.1 Definitions. The capitalized terms in this Agreement shall have the meanings set forth herein, including in the definitions attached and incorporated hereto as Annex I, whether singular or plural or in the present or past tense.

1.2 Interpretation.

(a) Any reference to an agreement or document (including those set forth electronically on an internet web site) or a portion or provision thereof shall be construed as a reference to same as has been, or may be, amended, supplemented or otherwise modified and in effect from time to time;

(b) Any reference to Applicable Law and to terms defined in, and other provisions of, Applicable Law (including those set forth electronically on an internet web site) shall be references to the same (or a successor to the same) as has been, or may be, amended, supplemented or otherwise modified and in effect from time to time during the Term;

(c) Any reference to a Person or entity shall include that Person or entity’s successors and permitted assigns;

(d) Any reference to a Governmental Authority shall be construed as including a reference to any Governmental Authority succeeding to all or a portion of its functions and capacities during the Term;

(e) Any reference to a particular Article, Section, Exhibit or Annex shall be a reference to the relevant Article of, Section of, Exhibit to, or Annex to, this Agreement, unless specifically noted otherwise;

(f) The words “herein,” “hereafter,” “hereunder” and similar words shall be construed as a reference to this Agreement as a whole and not to any particular portion or provision of this Agreement;

(g) Words in the singular may be interpreted as referring to the plural and vice versa, and words denoting natural persons may be interpreted as referring to other types of Persons and vice versa;

(h) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied;

(i) References to “dollars,” “\$,” “Dollars” or other similar verbiage shall refer to the legal tender of the United States of America;

(j) References to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time;

(k) The masculine shall include the feminine and neuter and vice versa;

(l) Whenever this Agreement refers to a number of days, such number shall refer to the number of calendar days unless Business Days are specified. A requirement that a payment be made (or an obligation be performed or a requirement be satisfied) on or by a day that is not a Business Day shall be construed as a requirement that the payment be made (or obligation be performed or requirement be satisfied) on or by the next following Business Day; and

(m) Whenever the term “include,” “includes” or “including” is used herein, such term shall be deemed to be followed by the words “without limitation” and construed as being illustrative and inclusive of but not exhaustive or limited to the items that follow.

ARTICLE 2

SALE AND PURCHASE OF ENERGY; OPERATION

2.1 *Purchase and Sale.*

(a) Energy and Attributes. In accordance with the terms and conditions hereof, commencing on the Commercial Operation Date and continuing during each hour occurring through the remainder of the Term, Seller shall sell and deliver to Purchaser at the Delivery Point and Purchaser shall purchase and accept from Seller at the Delivery Point all Delivered Energy together with all Attributes associated with the Project or Delivered Energy. For sake of clarity,

the Attributes and the Delivered Energy are a “bundled” product intended to satisfy the requirements of the Washington Clean Energy Transformation Act.

(b) Test Energy. Seller shall notify Purchaser in writing no less than thirty (30) days in advance of the date on which it expects to commission the first [Turbine]/[Inverter] of the Project, which, unless otherwise approved in advance in writing by Purchaser, shall be no earlier than [] (the “Test Energy Notice”). The Test Energy Notice shall specify Seller’s reasonable estimate of the output profile of Test Energy that it can deliver to Purchaser at the Delivery Point until the Commercial Operation Date. In accordance with the terms and conditions hereof, subsequent to the commissioning of the first [Turbine]/[Inverter] and continuing during each hour until the Commercial Operation Date, Seller shall sell and deliver to Purchaser at the Delivery Point and Purchaser shall purchase and accept from Seller at the Delivery Point all Test Energy together with all Attributes associated with the Test Energy.

(c) Certain Restrictions. In no event shall Seller have the right to (i) procure any element of the Delivered Energy or Attributes from sources other than the Project for sale or delivery to Purchaser under this Agreement, or (ii) except for in accordance with Sections 2.4, sell Energy or Attributes from the Project to any other Person.

(d) Purchaser’s Rights. At its sole discretion, Purchaser may re-sell or use for another purpose all or a portion of the Delivered Energy and Attributes. Purchaser will have exclusive rights to offer, bid, or otherwise submit the Delivered Energy and Attributes for re-sale in the market, and retain and receive any and all related revenues.

2.2 Contract Rate.

(a) Energy Payment. For all Delivered Energy (except Test Energy) delivered during any hour during the period from and including the Commercial Operation Date and continuing throughout the Term, Purchaser shall pay Seller an amount equal to the Contract Rate *multiplied by* each MWh of Delivered Energy (rounded to the third decimal point). [Each month, the Seller’s invoice for Energy deliveries in the prior month will include an hourly imbalance adjustment calculated as follows:

(i) If, during any such hour, the Delivered Energy for such hour is greater than the Metered Energy for such hour (such excess energy, a “Surplus Delivered Amount”), Purchaser shall pay Seller [(or, in the case of negative pricing, Seller shall credit Purchaser)]¹ an amount equal to (y) the [Mid-Columbia Real-Time Price]/[EIM Price]² for the relevant hour, *multiplied by* (z) each MWh of the Surplus Delivered Amount (rounded to the third decimal point); *or*

¹ **Note to Draft:** If this provision is relevant, parties to discuss negative pricing risk allocation.

² **Note to Draft:** Pricing subject to change depending on the location of the applicable Project.

(ii) If, during any such hour, the Delivered Energy for such hour is less than the Metered Energy for such hour (such deficiency, a “Surplus Metered Amount”), Seller shall provide a credit to Purchaser in an amount equal to (y) the [Mid-Columbia Real-Time Price]/[EIM Price] for the relevant hour, *multiplied by* (z) each MWh of the Surplus Metered Amount (rounded to the third decimal point).]³

[For the avoidance of doubt, Seller shall schedule Metered Energy, Scheduled Energy and Delivered Energy so as to minimize the adjustments contemplated by this Section 2.2(a) and may not schedule or otherwise cause any such adjustments in order to achieve any economic gain from such scheduling and delivery.]

(b) Energy Payment for Test Energy. Purchaser shall pay Seller for each MWh of Test Energy delivered to the Delivery Point (rounded to the third decimal point) at a rate equal to fifty percent (50%) of the Contract Rate; provided, that such rate shall be reduced to zero percent (0%) of the Contract Rate for any Test Energy delivered to the Delivery Point after the Guaranteed Commercial Operation Date.

(c) Other Costs and Charges. The Contract Rate shall not be subject to adjustment on account of any tariff, regulatory, market or other similar changes. For the sake of clarity, except as provided in Section 2.2(e) below with respect to certain taxes, as between the Parties, Seller shall be responsible for any and all costs or charges imposed on or allocated to Seller or the Project by any Governmental Authority.

(d) Disclaimer. Other than the right and obligation to buy Delivered Energy and Attributes from Seller in accordance with the provisions of this Agreement, this Agreement shall not be interpreted to create any ownership or proprietary rights in the Project in favor of Purchaser, and Purchaser hereby disclaims, any right, title or interest in any part of the Project.

(e) Taxes. [In addition to the amounts otherwise payable by Purchaser in accordance with this Section 2.2, Purchaser and Seller agree that the sale of Delivered Energy qualifies for a deduction from Washington public utility tax, and is exempt from, Washington State and Local Sales and Use Taxes and the sale of Attributes is not subject to Washington State and Local Sales and Use Taxes. In the event the sale of Delivered Energy and/or Attributes becomes subject to Washington State and Local Sales and Use Taxes, Purchaser shall pay (and shall indemnify and hold Seller harmless on an After-Tax Basis from and against) all Washington State and Local Sales and Use Taxes arising out of or with respect to the purchase or sale of Delivered Energy and/or Attributes that are imposed by any taxing authority at or after the Delivery Point (regardless of whether such Washington State and Local Sales and Use Taxes are imposed on Purchaser or Seller), together with any interest, penalties or additions to tax payable with respect to such Washington State and Local Sales and Use Taxes, except where such interest, penalties, or additions are attributable to the acts or omissions of Seller. Seller shall pay (and shall indemnify and hold Purchaser harmless on an After-Tax Basis from and against) all other taxes, including taxes arising out of or with respect to the purchase or sale of Delivered Energy and/or Attributes

³ **Note to Draft:** Imbalance settlement mechanism may not be needed if Project is within PSE’s service territory. Parties to work together to reach agreement on how settlement will be handled.

that are imposed by any taxing authority prior to the Delivery Point, taxes based on or measured by net income, business and occupation taxes, public utility taxes, property taxes, replacement taxes and/or special assessments that may be levied upon the Project as well as state or local sales taxes applicable to the construction, maintenance, repair or operation of the Project (including under RCW 82.08.962 and 82.12.962), together with any interest, penalties or additions to tax payable with respect thereto.]⁴

2.3 *Attributes and Incentives.*

(a) Attributes. Purchaser shall be entitled to, for no additional consideration and without double-counting, all Attributes associated with the Project and/or Delivered Energy, regardless of the type or form of such Attributes or when such Attributes may come into existence or be acquired by Seller.

(b) Project Qualification. Seller will use commercially reasonable efforts, including complying with all applicable registration and reporting requirements, and executing any and all documents or instruments reasonably necessary to cause the Project to qualify for all applicable Attributes available throughout the Term of this Agreement, at Seller's cost and expense; provided, however, that in the event Seller's reasonable out-of-pocket costs and expenses to (i) qualify Attributes not existing as of the Effective Date, and (ii) comply with any change in Applicable Law arising after the Effective Date, including changes in Applicable Law with respect to the WRAP Program or changes implemented by WREGIS, necessary to qualify or deliver such Attributes to Purchaser exceeds fifty thousand dollars (\$50,000) during any Contract Year, Seller shall be entitled to reimbursement from Purchaser for such costs and expenses in excess of the foregoing amount. For the sake of clarity, costs that arise from Seller's obligation to obtain and maintain its registration in WREGIS for the Project and to comply with the Green-e® Standard for the Project to be listed as a "CRS Listed Facility" as set forth in Section 2.3(c) do not count towards, and are not subject to, the foregoing limitation, except to the extent WREGIS modifies such registration requirements after the Effective Date. Seller shall make such filings and take such other actions as Purchaser may from time-to-time reasonably request in order to preserve and maintain the Attributes made available to Purchaser hereunder in accordance with the applicable standards and to otherwise enable Purchaser to use, sell and transfer such Attributes in accordance with market standards. Notwithstanding the foregoing, Seller shall have no obligation to make physical changes to the Project to provide any additional Attributes pursuant to this Section 2.3(b) unless Purchaser agrees in advance in writing to pay the costs and expenses associated with such physical changes to the Project.

(c) Generation Attribute Registration. Seller shall, at Seller's sole cost and expense, take all necessary steps and actions prior to the Commercial Operation Date to allow the Generation Attributes that will be transferred to Purchaser pursuant to this Agreement to be tracked in WREGIS, to comply with the Green-e® Standard for the Project to be listed as a "CRS Listed Facility" thereunder, and to register with any other registry for Attributes as may be requested by Purchaser from time to time. Seller shall register the Project in WREGIS as an eligible renewable

⁴ **Note to Draft:** Subject to revision for Projects with a Delivery Point outside of the State of Washington.

resource for Washington, and, if the Applicable Law then in effect so provides, for any other state reasonably requested by Purchaser during the Term. Commencing on the Commercial Operation Date and continuing through the end of the Term, Seller shall, at Seller's sole cost and expense, comply with all applicable WREGIS operating rules and maintain its registration in WREGIS for the Project and to comply with the Green-e® Standard for Attributes for the Project to be listed as a "CRS Listed Facility" (and any other registry included pursuant to this Section 2.3(c)). For the avoidance of doubt, nothing in this Section 2.3 shall require the Generation Attributes to be certified under the Green-e® Standard, but any Generation Attributes shall be eligible for certification.

(d) Capacity Attribute Registration. Seller shall, at Seller's sole cost and expense, take all necessary steps and actions prior to the Commercial Operation Date to allow the Capacity Attributes to comply with the WRAP Program and to register with any other registry for Attributes as may be requested by Purchaser from time to time. Commencing on the Commercial Operation Date and continuing through the end of the Term, Seller shall, at Seller's sole cost and expense, maintain its registration with the WRAP Program.

(e) Delivery. Seller shall, at Seller's sole cost and expense, deliver and convey the Attributes associated with the Delivered Energy within ten (10) Business Days after the end of the month in which the WREGIS certificates for such Attributes are created in the applicable registry. In the event that during the Term WREGIS is not available as a means for transferring any of the Attributes to Purchaser, Seller shall (i) arrange for an alternative mutually acceptable method of assigning to Purchaser all rights and authority necessary for Purchaser to register, hold, and manage such Attributes in Purchaser's own name and for Purchaser's account and (ii) execute and deliver to Purchaser on a quarterly basis the attestation form attached hereto as Exhibit C ("Attestation Form") and/or such other documentation as may be required verifying the assignment of the Attributes to Purchaser pursuant to this Agreement. If Seller fails to deliver Attributes in accordance with this Section 2.3, upon five (5) Business Days' notice to Seller, Purchaser may purchase Replacement Renewable Energy Credits "bundled" with energy as necessary to satisfy the Washington Clean Energy Transformation Act from any third party in such quantities as Seller's shortfall and Seller shall reimburse Purchaser for one hundred percent (100%) of the costs thereof that are supported with reasonable documentation by Purchaser within fifteen (15) Business Days of notice from Purchaser of such purchase. During the Term, Seller shall act as, or retain a third party to be, the "Qualified Reporting Entity" (as defined in the WREGIS Operating Rules) and provide renewable generation data to WREGIS.

(f) Change in Law. In the event that for any reason Applicable Law prevents Seller from assigning Attributes to Purchaser notwithstanding the requirements hereof, if Seller realizes the monetary value of such Attributes, Seller shall, from time to time, and in any event within thirty (30) days of actual receipt, pay to Purchaser the amount that Seller actually receives (net of any costs, taxes or expenses Seller incurs to receive such amounts) as a result of its ownership of the applicable Attributes. Seller shall use commercially reasonable efforts to realize the value of any such Attributes and to maximize the value received by Seller with respect to any such Attributes.

(g) Reporting and Public Statements. Unless required by Applicable Law (in which case Seller shall notify Purchaser of such requirement a reasonable time prior to compliance therewith), Seller shall not report to any Person that the Attributes belong to any Person other than Purchaser, and Purchaser may report under any such program that the Attributes belong to Purchaser. Seller shall maintain and make available to Purchaser all statements and records reasonably required to properly document compliance with Seller's obligations to Purchaser with respect to the Attributes.

(h) Additional Documents. Seller shall provide such additional documents and instruments as are reasonably requested by Purchaser to effect or evidence transfer of the Attributes to Purchaser or its designees. Each Party shall promptly give to the other Party copies of all documents it submits to any Governmental Authority to effectuate or record any such transfers.

(i) Incentives. Seller shall be entitled to all Incentives relating in any way to the Project. Purchaser acknowledges that Seller has the right to sell or transfer any Incentives to which it is entitled pursuant to this Section 2.3(i) to any Person other than Purchaser at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Purchaser hereunder. Purchaser shall have no claim, right or interest in such Incentives or in any amount that Seller realizes from the sale of such Incentives.

2.4 *Purchaser Voluntary Curtailment*. In the event that during any hour Seller is required by a Purchaser Voluntary Curtailment to curtail energy deliveries from the Project to Purchaser, Purchaser shall pay to Seller, as Seller's sole remedy, (i)(A) the Contract Rate *multiplied by* (B) the Deemed Delivered Energy for such Purchaser Voluntary Curtailment Period. Seller shall use reasonable efforts to sell Energy generated by the Project during any such Purchaser Voluntary Curtailment at the best price reasonably available in the market at the time of sale in order to minimize negative financial impacts to Purchaser and any revenue from such sales shall be offset against amounts that would otherwise be due and owing by Purchaser. Seller may sell the Energy at a negative price in Seller's sole discretion; provided, that in no event will Purchaser be required to credit or true-up Seller for any costs or losses associated with the sale of Energy at a negative price. During any period of Purchaser Voluntary Curtailment, Purchaser shall be entitled to the Attributes associated with any Energy delivered by the Project in the same manner as provided in Section 2.3(a) of this Agreement with respect to Delivered Energy. Seller shall provide Purchaser access to information reasonably necessary to verify Seller's determination of Deemed Delivered Energy for any applicable period. During any Purchaser Voluntary Curtailment, Purchaser shall have no obligation to make reports with respect to the CCA. For the sake of clarity, irrespective of Purchaser having any reporting obligation (if any) under the CCA when Purchaser is receiving Delivered Energy, Purchaser shall have no obligation to make reports with respect to the CCA during any Purchaser Voluntary Curtailment.

2.5 *Billing and Payment*. Billing and payment for Delivered Energy sold to and purchased by Purchaser under this Agreement and any other amounts due and payable hereunder shall be as follows:

(a) Seller shall calculate the amount of Delivered Energy hereunder following the last Day of each calendar month and on the last Day of the Term, if not the last Day of the month. No later than the tenth (10th) Day of each calendar month, Seller shall deliver to Purchaser an electronic invoice showing: (i) the amount of Delivered Energy during the preceding calendar month (or in the case of the final year of the Term, the last calendar month or portion thereof of the Term), and (ii) any other amounts owed by one Party to the other Party pursuant to this Agreement, including, if applicable, any amounts payable pursuant to Section 2.12. When applicable under this Agreement, Seller shall also set forth the applicable Mid-Columbia Flat Prices and provide supporting documentation. Not more than thirty (30) Days after receipt of each timely delivered invoice, Purchaser shall pay to Seller, by wire transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time, the undisputed amount set forth as due in such invoice.

(b) The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Energy and Attributes during the monthly billing period under this Agreement, including any related damages calculated pursuant to Section 2.12, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

(c) Within two (2) years after receipt of any invoice, either Party may provide written notice to the other Party of any alleged error therein and the Parties shall meet, by telephone conference call or otherwise within ten (10) Days of the other Party's receipt of such notice, for the purpose of attempting to resolve the Dispute. If Purchaser in good faith disputes any portion of the charges contained in an invoice, Purchaser will pay the undisputed portion and may withhold the disputed portion of the invoice in accordance with Section 2.5(d). If the Parties are unable to resolve the Dispute within thirty (30) Days after such initial meeting, then either Party may proceed to seek any remedy that may be available to such Party at law or in equity.

(d) If Purchaser in good faith disputes an invoice, Purchaser shall provide Seller with a written explanation specifying in detail the basis for the dispute, and Purchaser shall pay the undisputed portion of the invoice in accordance with this Section 2.5. Disputed portions of Seller's invoice shall be due and payable no later than ten (10) days after resolution of the dispute. Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate equal to the Prime Rate then in effect plus one percent (1%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law ("Late Payment Rate"). If, as a result of a Dispute settled in favor of Purchaser, a refund is owed to Purchaser, then the amount of the overpayment shall bear interest from the date on which such payment was made by Purchaser through and including the date that the overpayment is refunded by Seller at an annual rate equal to the Late Payment Rate.

(e) Statements or invoices shall be sent to Purchaser by electronic mail to the electronic mail address designated in Section 11.5. Purchaser may change the electronic mail address by providing written notice to Seller.

(f) To the extent that at the end of the Term, after offsetting all amounts owed by Purchaser to Seller, Seller owes any amount to Purchaser, Seller shall pay such amount to Purchaser within thirty (30) days after the expiration of the Term.

2.6 Title and Risk of Loss. Title to and risk of loss with respect to Delivered Energy and Attributes, subject to the immediately following sentence, delivered to Purchaser by Seller in accordance with this Agreement shall pass from Seller to Purchaser when the same are delivered by Seller for the benefit of Purchaser at the Delivery Point. Title and risk of loss with respect to Attributes that are not capable of being delivered to the Delivery Point shall pass from Seller to Purchaser when the same first come into existence, except for title and risk of loss for RECs which shall pass from Seller to Purchaser when they are transferred in WREGIS in accordance with Section 2.3(c). For the avoidance of doubt, the Parties agree that the transfer of title to such Attributes occurs in the state of [Washington]. Until title passes, Seller shall be deemed in exclusive control of the same and shall be responsible for any damage or injury caused thereby. After title to the Delivered Energy or Attributes passes from Seller to Purchaser, Seller shall no longer be in control of same, shall have no further obligations with respect thereto, and shall not be responsible for any damage or injury caused thereby. Seller represents and warrants to Purchaser on a continuing basis that (i) it has not sold, pledged, assigned, transferred or otherwise disposed of, and will not sell, pledge, assign, transfer or otherwise dispose of, any of the Energy or Attributes associated with the Project to any Person other than Purchaser, and (ii) it will deliver to Purchaser the Delivered Energy and Attributes free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Delivery Point.

2.7 Curtailment.

(a) Notwithstanding any other provision of this Agreement to the contrary, Seller may curtail deliveries of Energy if and for so long as Seller reasonably believes that curtailment is necessary for a Planned Outage or for a Forced Outage.

(b) Subject to Section 2.4, Seller shall curtail deliveries of Energy as required pursuant to a Purchaser Voluntary Curtailment Order or System Curtailment Order.

(c) To the extent Seller has knowledge of the curtailment of the delivery of Energy, Seller shall provide notice of such curtailment to Purchaser as soon as reasonably practicable. To the extent Purchaser has knowledge of the curtailment of the delivery of Energy, Purchaser shall provide notice of such curtailment to Seller as soon as reasonably practicable.

(d) Seller is responsible for securing any required Transmission Provider approvals for Project outages (Planned Outages or Forced Outages, as applicable), including securing changes in its outage schedules when Transmission Provider disapproves Seller's schedules or cancels previously approved outages.

(e) Seller shall notify Purchaser, via telephone to a number specified by Purchaser or by e-mail or other form acceptable to Purchaser through Seller's outage management

system, of any Forced Outage as soon as practicable, and shall provide, to the extent information is available, a written report detailing the reason, timing, expected duration, and impact of the Forced Outage on the Energy output of the Project within five (5) Days of its occurrence. No later than the fifteenth (15th) Day of each month, Seller also shall provide to Purchaser a monthly report of Forced Outages.

(f) In the event any Transmission Provider or Balancing Authority takes any action, or orders Purchaser or Seller to take any action, that affects Purchaser's ability to take delivery of Delivered Energy hereunder at the Delivery Point or that affects Seller's ability to deliver Energy hereunder to the Delivery Point, then the Parties shall use commercially reasonable efforts (each at its own cost and expense, except to the extent such action or order arises from the other Party's failure to comply with Applicable Law, Prudent Operating Practices or this Agreement) to mitigate the adverse effects of such action or order, which may include the sale of Energy to third parties. The Parties acknowledge that upon such order to curtail transmission service it may be difficult or impossible for the Parties to mitigate the adverse effects of such action(s) or order(s).

2.8 *Interconnection and Transmission.*

(a) Interconnection. Seller shall be responsible for presenting to and receiving the Interconnection Agreement Counterparties' direction with respect to and/or approval of the Project interconnection requirements and facilities so that Seller can perform its Energy deliveries hereunder in accordance with applicable Interconnection Agreement Counterparty requirements. Seller shall be responsible, at Seller's sole cost, for putting into place all required metering, telemetry, communication systems and other technical requirements under the Interconnection Agreement.

(b) Transmission. Seller shall be responsible for arranging for all transmission services required up to the Delivery Point and shall be responsible for the payment of any charges for transmission or wheeling services, ancillary services, control area services, congestion charges, location marginal pricing differentials, transaction charges and line losses ("Transmission Charges") up to and at the Delivery Point.

2.9 *Scheduling; Imbalance Charges.*

(a) Scheduling.

(i) Seller shall be responsible for arranging all scheduling services necessary to ensure compliance with the applicable Transmission Provider's or other power scheduling regulations and protocols up to and at the Delivery Point, and shall be further responsible for all costs and charges, including imbalance charges arising prior to or at the Delivery Point, due to deviations from the "schedule" except to the extent caused by Purchaser. From and after the commencement of deliveries of Test Energy, and thereafter each hour during the Term, Seller shall schedule for delivery to the Delivery Point a quantity of energy consistent with Seller's Estimated Forecast of the actual quantity of

Metered Energy to be delivered to the Metering Point on an hourly firm basis, such that Purchaser shall receive the full amount of Scheduled Energy in each hour, regardless of variations in actual Energy output from the scheduled output due to the intermittent nature of the Project. Scheduling shall occur, consistent with the applicable Transmission Provider's or other power scheduling and protocols, on a prescheduled "day-ahead" basis and shall be subsequently updated on an "hour-ahead" basis. Imbalances between Scheduled Energy and Metered Energy in each hour shall be supplied or acquired by Seller and Seller shall be solely responsible for the costs incurred with respect thereto, including the cost of generation imbalance service and any related charges or penalties relating thereto (collectively, the "Balancing Charges"), except to the extent that such Balancing Charges were caused by Purchaser's noncompliance with the scheduling obligations set forth in this Section 2.9.

(ii) Seller shall not make adjustments to the schedule later than seventy-five (75) minutes prior to the flow hour.

(iii) Purchaser shall be responsible for arranging all scheduling services necessary to ensure compliance with applicable power scheduling regulations and protocols after the Delivery Point, and shall be further responsible for all costs and charges, including imbalance charges arising after the Delivery Point, due to deviations from the "schedule" except to the extent caused by Seller.

(iv) The Parties shall use commercially reasonable efforts to minimize any Balancing Charges.

(v) The Parties shall use commercially reasonable efforts to comply with all applicable policies of the Transmission Provider in connection with the scheduling and delivery of the Metered Energy. Penalties or similar charges assessed by the Transmission Provider and caused by a Party's noncompliance with the scheduling obligations set forth in this Section 2.9 shall be the responsibility of the Party whose action or inaction caused the penalty.

(b) Seller Cooperation. To assist Purchaser with any applicable power scheduling regulations and protocols, and subject to the schedules submitted pursuant to Section 2.9(a)(i), Seller shall:

(i) every hour provide Purchaser with a two (2) day hourly look ahead, non-binding power forecast, showing (a) the expected production of the Project in MWh (which such forecast will be uploaded hourly on to an ftp site);

(ii) every day provide Purchaser with a ten (10) day hourly look ahead, non-binding power forecast, showing (a) the expected production of the Project in MWh;

(iii) provide Purchaser with real time access to Seller's SCADA historian for Project performance information reasonably requested by Purchaser, including, to the extent readily available, information such as data points for [wind

direction, wind speed,)/[solar irradiation] current MWh, number of [Turbine]/[Panel]s available, number of [Turbine]/[Panel]s running, and number of [Turbine]/[Panel]s without communication, and shall cooperate in providing Purchaser with any other reasonably requested information on a real time basis;

(iv) utilize the forecasting service designated from time to time by Purchaser, which shall initially be Meteorological forecasting or other forecasting tool mutually agreed upon by the Parties and provide Purchaser with access and data as reasonably necessary to enable Purchaser at Purchaser's cost to utilize its own separate forecasting service;

(v) no later than ninety (90) minutes prior to the flow hour, Seller shall schedule, and provide to Purchaser, Seller's good faith estimate of the actual quantity of Metered Energy to be delivered to the Metering Point and, in addition Seller shall provide to Purchaser the minimum and maximum values which correspond to Seller's good faith estimate of the range within which the Project will produce during the delivery hour ("Seller's Estimated Forecast"); and

(vi) provide any updates to the e-tags and forecast of Seller's Estimated Forecast no later than seventy-five (75) minutes prior to the flow hour.

2.10 *Project Operations and Maintenance.*

(a) During the Term, the Project shall be operated and maintained by Seller or its designee in accordance with Prudent Operating Practices, Applicable Law, this Agreement and the Interconnection Agreement. The cost of such operation and maintenance is included in the Contract Rate and Purchaser shall have no responsibility for any such costs under any circumstances whatsoever. Seller shall obtain all certifications, permits, licenses, insurance and approvals necessary to construct, operate and maintain the Project and to perform its obligations hereunder. Seller shall use good faith efforts to maximize the output of the Project.

(b) As soon as reasonably practicable, and in any event no later than two hundred and seventy (270) Days prior to the expected Commercial Operation Date, Seller shall develop proposed written operating procedures for the Project and submit such proposed procedures to Purchaser for Purchaser's review and approval, such approval not to be unreasonably withheld, conditioned or delayed (as approved by Purchaser, the "Operating Procedures"). Purchaser shall have [ninety (90) Days] from the date it receives the proposed Operating Procedures to review and provide comments to Seller. Seller shall incorporate all of Purchaser's reasonable comments into the final Operating Procedures, which shall be subject to approval by Purchaser, such approval not to be unreasonably withheld, conditioned or delayed. The final Operating Procedures may be amended from time to time by using the foregoing procedures. The Parties agree that the Operating Procedures will cover the protocol under which the Parties will perform their respective obligations under this Agreement and will include, but will not be limited to, procedures concerning the following: (i) the method of day-to-day communications and reporting; (ii) key personnel lists for Seller and Purchaser; (iii) reasonable coordination regarding

the timing of scheduled maintenance and Planned Outages; (iv) reporting of scheduled maintenance, Planned Outages and Forced Outages of the Project; (v) reporting of curtailment periods, including but not limited to Purchaser Voluntary Curtailments or System Curtailments; and (vi) ongoing reporting of projected capacity reductions due to Planned Outages, Forced Outages and any other curtailments reasonably foreseeable by Seller.

(c) No later than one hundred and twenty (120) days prior to the commencement of each Contract Year, Seller will provide Purchaser a non-binding Planned Outage schedule for the forthcoming year. Seller shall be excused from providing electricity during any Planned Outage to the extent thereof (but without limiting Seller's performance guarantee obligations set forth in Exhibit H).

(d) Seller shall notify Purchaser with as much advance notice as practicable of any proposed or necessary maintenance outages, including Planned Outages. The Parties shall work to plan such outage to mutually accommodate, as practicable, the reasonable requirements of Seller and service obligations of Purchaser; provided that Purchaser's requirements shall not unduly prejudice the operation and maintenance of the Project.

(e) Purchaser and its representatives will have the right of ingress to and egress from the Project during normal business hours upon reasonable advance notice to Seller and for any purposes reasonably connected with this Agreement, including for the purpose of inspecting the Project, the Site, and/or Seller's construction, operation and/or maintenance of the Project; provided that any such visit to the Site shall not unduly interfere with the construction, operation and/or maintenance of the Project.

2.11 Performance Guarantees. Seller guarantees that the Project will satisfy the performance guarantees set forth in Exhibit H. Not later than thirty (30) days following the end of each Contract Year, Seller shall provide to Purchaser a written report detailing Seller's calculations in respect of the applicable performance guarantee for each period as required pursuant in Exhibit H. Seller shall also furnish all underlying data utilized in such calculations. Such report and data shall be furnished in their native readable format (*e.g.*, while providing a pdf is permissible, it shall be accompanied by the original report in its native software format such that it is capable of being read electronically by Purchaser). Promptly following receipt by Purchaser of Seller's calculations required by Exhibit H, and in any event within thirty (30) days thereafter, the Parties shall meet to review such calculations and the underlying data supporting such calculations, including any adjustments thereto to reflect inaccuracies or defects therein, if any. The Parties shall use commercially reasonable efforts to agree upon the calculations required pursuant to Exhibit H within thirty (30) days following receipt by Purchaser of Seller's calculation thereof.

2.12 Energy Imbalance Market. Seller shall at Seller's sole cost and expense, design the Project in compliance with all requirements of the Energy Imbalance Market as necessary to enable the Project to qualify as a participating resource thereunder, and cause the Project to be designated as a participating resource (or its equivalent from time to time) in the Energy Imbalance

Market. For the sake of clarity, costs associated with compliance by Seller with its obligations under the Interconnection Agreement shall not be reimbursable by Purchaser.

2.13 *Market Structure.* The delivery obligations of Seller (to and at the Delivery Point) and the scheduling, delivery and transmission obligations of Purchaser (from and after the Delivery Point) outlined in this Article 2 reflect the market structure under which the Project will operate as of the Commercial Operation Date. If (i) there are material market structure changes during the Term that prevent Seller from meeting its obligation to deliver Energy to and at the Delivery Point, or that prevent Purchaser from meeting its scheduling, delivery and transmission obligations from and after the Delivery Point, or (ii) Transmission Provider or Purchaser joins a regional transmission organization or independent system operator structure during the Term, the Parties will use commercially reasonable efforts to amend this Agreement to enable Seller or Purchaser to meet such scheduling, delivery and transmission obligations within the new market structure and in a manner that maintains the existing allocation of scheduling, delivery and transmission obligations between Seller and Purchaser under this Agreement, or to enable Transmission Provider or Purchaser, as applicable, to participate in such regional transmission organization or independent system operator structure, subject in all cases to Section 2.2(c).

2.14 *Seller's Assistance.* Seller covenants to provide reasonable cooperation to Purchaser at Purchaser's request in supporting efforts by Purchaser to oppose any action of any regulatory body having jurisdiction thereover to direct the material modification of terms or conditions of this Agreement.

ARTICLE 3 TERM

3.1 *Term.* The "Term" of this Agreement shall be the Initial Term plus any Renewal Term, such Renewal Term at the Purchaser's sole election pursuant to the terms of Section 3.3 hereof.

3.2 *Initial Term.* The initial term (the "Initial Term") shall commence on the Effective Date and shall continue until the date that is [____] ([__]) Contract Years following the Commercial Operation Date.

3.3 *Negotiation Period at End of Initial Term.* Upon notice specifying the initially proposed transaction terms delivered to Seller at least eighteen (18) months but not more than twenty-four (24) months prior to the expiration of the Term, Purchaser shall be entitled to require Seller to enter into good faith negotiations on an exclusive basis with Purchaser with respect to Purchaser's ability to renew this Agreement for an additional period (any such period the "Renewal Term") upon pricing terms negotiated by the Parties. Seller shall respond to any request and commence negotiations with Purchaser within fifteen (15) Business Days of receipt of notice from Purchaser. Prior to the expiration of the foregoing six (6) month negotiation period, Seller shall not commit to sell the output of the Project to any third-party. In the event that prior to the date twelve (12) months prior to the expiration of the Term, Seller and Purchaser do not enter into an

amendment to this Agreement for a Renewal Term, Seller shall be under no further obligation to negotiate exclusively with Purchaser with respect to the Energy and Attributes.

3.4 *Right of First Offer.* If, at any time during the Term or for a period of one (1) year thereafter, or if either Party terminates this Agreement (other than due to an Event of Default by Purchaser), for a period of one (1) year from the date upon which such termination occurs (such period, the “Exclusivity Period”), should Seller desire to enter into an obligation or agreement to sell or otherwise transfer directly or indirectly, (A) a fifty percent (50%) or greater interest in the assets comprising the Project or (B) a fifty percent (50%) or greater interest (equity or voting) in Seller, in any such case to any third party, Seller shall furnish Purchaser with written notice thereof; provided, that the foregoing shall not apply to any transaction in which the direct or indirect interest in Seller being transferred constitutes less than twenty-five percent (25%) of the value of such transaction. Within thirty (30) days of Purchaser’s receipt of such notice, Purchaser shall notify Seller if Purchaser is interested in negotiating the purchase of the Project. If Purchaser so notifies Seller of its interest, then Seller shall promptly and in good faith provide Purchaser with such diligence information as may be reasonably related to the valuation and condition of the Project and the Parties shall negotiate in good faith for at least ninety (90) days in an effort to reach a mutually acceptable purchase transaction. If notwithstanding such negotiations the Parties fail to reach such agreement within such ninety (90) day period, then Seller shall be permitted for the next one hundred and eighty (180) days to enter into an agreement on substantially similar or more favorable (to Seller) terms and pricing than the last offer made by Purchaser to Seller pursuant to this Section 3.4. If Seller fails to enter into such an agreement within such one hundred and eighty (180)-day period, then the provisions of this Section 3.4 shall once again apply.

3.5 *Purchase Option.*

(a) Grant of Option. In consideration of the promises and mutual representations, warranties, covenants and agreements in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby grants to Purchaser an option (the “Option”), exercisable within ninety (90) days of either: (i) the earlier of (a) the later of (A) the [] ([]th) anniversary of the Commercial Operation Date and (B) the date on which the third-party tax equity investor or investors for the Project are no longer invested in the Project; or (b) the [] ([]th) anniversary of the Commercial Operation Date or (ii) the [] ([]th) anniversary of the Commercial Operation Date, to acquire all tangible and intangible assets comprising the Project (collectively, the “Project Assets”).

(b) Purchase Price. The base purchase price for the Project Assets will be the Fair Market Value. For the purposes of this Section 3.5, the “Fair Market Value” of the Project Assets shall be the cash amount that the Project Assets would realize if sold in the open market by a Seller that is sophisticated and willing but not acting under duress to a Purchaser that is sophisticated and willing but not acting under duress, taking into account the financial condition, assets liabilities, age, income prospects, and decommissioning and reclamation obligations of or associated with the Project Assets.

(c) Due Diligence. Purchaser may, no earlier than thirty (30) days prior to each of the Option periods set forth in Section 3.5(a), request that Seller provide Purchaser with all due diligence materials reasonably requested by Purchaser regarding the Project Assets so as to permit Purchaser to assess the Fair Market Value thereof, and Seller shall promptly provide any such requested due diligence materials.

(d) Exercise of Option. In order to exercise the Option, Purchaser shall furnish to Seller a non-binding notice of election, including therewith its calculation of the Fair Market Value. If the Seller disagrees with Purchaser's calculation of Fair Market Value, Seller shall provide written notice to the Purchaser within thirty (30) days of its receipt of the Purchaser's Fair Market Value calculation contesting the results, assumptions or other factors utilized by Purchaser in the calculation of the Fair Market Value. Thereafter, the determination of Fair Market Value shall be made by an Independent Valuator pursuant to the procedure set forth in Section 3.5(e); provided, however, that if Seller does not provide any such dispute notice within such thirty (30) day period, then Seller shall be deemed to have agreed with the Purchaser's calculation of Fair Market Value.

(e) Independent Valuator. If necessary to ascertain the Fair Market Value, each of the Parties shall designate an Independent Valuator within ten (10) days from the date of the disputing Party's notice, if any, pursuant to Section 3.5(d). A qualified Independent Valuator shall be an Independent Valuator with at least five (5) years' experience in the valuation of power projects comparable to the Project, and shall not have performed any work for either of the Parties or any of their respective Affiliates within the three (3) year period prior to its appointment. Each of the two (2) Independent Valuators shall be directed to determine the Fair Market Value within thirty (30) days of appointment and to notify the Parties in writing of its determination. If the two (2) determinations differ by less than five percent (5%), the average of the two determinations shall be deemed to be the Fair Market Value, respectively. If the two (2) determinations differ by five percent (5%) or more, then the two (2) Independent Valuators shall, within five (5) days after receipt of both valuations, (i) appoint a third Independent Valuator with similar qualifications (which shall not have performed any work for either of the Parties or any of their respective Affiliates within the three (3) year period prior to its appointment) and (ii) furnish to such third Independent Valuator their written valuation reports. Within thirty (30) days of appointment, the third Independent Valuator shall determine the Fair Market Value, which determination shall not be less than the lower of the two (2) determinations and shall not be greater than the higher of the two (2) determinations, and shall notify the Parties of such determination, which shall be binding upon the Parties. The Parties shall each bear the cost of the Independent Valuator appointed by it, and they shall share equally the cost of any third Independent Valuator.

(f) Closing. The closing of the sale of the Project Assets shall occur no later than ninety (90) days following the Parties' agreement on the Fair Market Value (or later, to the extent reasonably necessary to obtain any required third party and/or governmental consents), and the sale shall include customary representations and warranties, including representations and warranties related to authority, due execution, ownership, and the ability of the Seller to sell such Project Assets free and clear of any liens or other encumbrances.

ARTICLE 4 TIMELINE, DEFAULT, AND TERMINATION

4.1 *Development and Construction.* Following the Effective Date, Seller shall work to: (a) secure all necessary land use rights for the Site and all necessary rights of access and rights of way for delivery of Energy to the Delivery Point; (b) complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project; (c) perform all studies, pay all fees, acquire all necessary approvals, and execute of all necessary agreements with all applicable Transmission Providers to receive and deliver Energy at the Delivery Point; (d) acquire all Governmental Approvals and other necessary approvals for the construction, operation, and maintenance of the Project; (d) achieve all Milestones set forth in Section 4.4; and (e) achieve a Commercial Operation Date on or before the Guaranteed Commercial Operation Date. Seller will cause the Project to be designed, engineered, constructed, installed, operated, and maintained in accordance with Prudent Operating Practices and all Applicable Law.

4.2 *Government Approvals.* Seller shall secure and maintain, at no cost to Purchaser, all approvals, permits (including environmental permits), licenses, easements, rights-of-way, releases and other approvals of any Governmental Authority necessary for the construction, engineering, operation and maintenance of the Project, and the performance by Seller of its obligations hereunder (the “Governmental Approvals”). Such obligations shall include, but shall not be limited to, (i) the responsibility to comply with all FERC-approved compliance and reporting responsibilities with respect to the Project required by the North American Electric Reliability Corporation or any successor electrical reliability organization, and (ii) the responsibility to qualify all Attributes in accordance with Applicable Law and the requirements set forth in this Agreement. Seller shall provide Purchaser with copies of all material Governmental Approvals promptly following receipt of same.

4.3 *Project Configuration; Progress Reporting.*

(a) The Project configuration as currently contemplated is as described in Exhibit A. Seller shall not materially modify the Project configuration without Purchaser’s prior written consent, not to be unreasonably withheld, conditioned or delayed (it being understood that it shall be reasonable for Purchaser to withhold such consent if Purchaser determines that the proposed change by Seller would materially affect the output profile or characteristics of the Project). If Seller desires to materially modify the Project configuration, Seller shall provide Purchaser with the detail of such proposed modification, including all information and data as may be reasonably necessary for Purchaser to evaluate such proposal, including with respect to any project characteristics, equipment suppliers and technology type that Seller proposes to use in construction of the Project. If any such material modification is agreed, the Parties shall amend Exhibit A to reflect the final technology selection as so agreed.

(b) Commencing upon the end of the first calendar month after the Effective Date, Seller shall submit to Purchaser, no later than the tenth (10th) Business Day of each calendar month and, commencing with the week that is two (2) months prior to the projected Commercial Operation Date, on a more regular basis as needed (but no less than once per week) until the

Commercial Operation Date is achieved, progress reports in a form reasonably acceptable to Purchaser containing updates as to development and construction status and schedules, and providing, at a minimum, a safety report and project schedule analysis of actual progress compared to planned progress by major area. In lieu of providing such reports, Seller may provide copies of any progress report or other similar document provided to any Lender regarding construction of the Project.

(c) Following the Effective Date and continuing until the Commercial Operation Date, following delivery of each progress report Seller shall meet with Purchaser upon Purchaser's request, no more than once a month, to provide the opportunity for discussion regarding the status of development activities. On a quarterly basis, Seller shall meet with Purchaser to provide a detailed overview and update on the status of the Project's development, including discussion of such agenda items as Purchaser may request reasonably in advance of such quarterly meeting. Seller's Senior Management shall attend such quarterly meetings. Purchaser shall have the right to monitor the construction, start-up and testing of the Project during normal business hours; provided, that Purchaser provides Seller with at least three (3) Business Days' advance written notice and does not unreasonably interfere with Seller's activities, and Seller shall comply with all reasonable requests of Purchaser with respect to the monitoring of these events. Seller shall cooperate in such physical inspections of the Project as may be reasonably requested by Purchaser during and after completion of construction. All persons visiting the Project on behalf of Purchaser shall comply with all of Seller's applicable safety and health rules and requirements that are provided or identified to such persons. Purchaser's technical review and inspection of the Project shall not be construed as endorsing the design thereof or as any warranty of safety, durability, or reliability of the Project.

(d) Seller will not share ownership of, or allow any other Person to use, the Seller's Interconnection Facilities for any other purpose than to deliver Energy to Purchaser.

4.4 *Schedule and Capacity Guarantees; Liquidated Damages.*

(a) The Parties agree that time is of the essence as regards construction of the Project, and accordingly certain milestones for the construction of the Project, as set forth in the Milestone schedule attached hereto as Exhibit G ("Milestones") must be achieved in a timely fashion. Therefore:

(i) Within seven (7) days after completion of each Milestone, Seller shall provide Purchaser with notice along with accompanying documentation (including reasonably redacted copies of applicable agreements, Governmental Approvals, and certificates) to reasonably demonstrate the achievement of such Milestone.

(ii) If Seller does not achieve a Milestone by the specified date, as such Milestone date may be extended on a day-for-day basis to the extent such Milestone is delayed by an event of Force Majeure or delays caused by Purchaser (each such delay, an "Excused Delay"), Seller shall submit to Purchaser, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan") that

describes in detail a reasonable course of action and plan (including accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) to achieve the missed Milestones and all subsequent Milestones; provided, however, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones. If Seller misses a Milestone, the frequency of progress reports required under Section 4.3(d) shall increase to bi-weekly until Seller meets the missed Milestone and any subsequent Milestone by the specified date for such Milestone. Seller's failure to provide and/or timely implement a Remedial Action Plan within the time requirements and to the extent required in this Section 4.4(a) shall be material breaches of this Agreement.

(iii) The Parties may meet from time to time to discuss potential changes to the Milestone schedule set forth on Exhibit G. Either Party may deliver a notice to the other Party requesting such a meeting and outlining proposed changes to the Milestone schedule. Following receipt of such notice, the Parties shall meet within sixty (60) days to discuss such proposal. The Milestones may be adjusted following the mutual written consent of both Parties, which consent shall be granted at each Party's sole discretion.

(b) In the event that Seller has not achieved the Construction Start Date on or before the Guaranteed Construction Start Date, Seller shall pay Purchaser daily delay liquidated damages in an amount per Day equal to \$[____], *multiplied by* the Planned Nameplate Capacity (in MWs) for each Day of delay beyond the Guaranteed Construction Start Date until the Construction Start Date occurs shall accrue and be payable on a monthly basis, as set forth in Section 4.4(d). In the event that the Commercial Operation Date occurs on or before the Guaranteed Commercial Operation Date, any liquidated damages paid pursuant to this Section 4.4(b) shall be refunded to Seller without interest.

(c) In the event that the Commercial Operation Date has not occurred on or before the Guaranteed Commercial Operation Date, Seller shall pay Purchaser daily delay liquidated damages in an amount per Day equal to [____] Dollars (\$[____]) *multiplied by* the Planned Nameplate Capacity (in MWs) for each Day of delay beyond the Guaranteed Commercial Operation Date until the Commercial Operation Date has been achieved.

(d) In the event that Seller incurs delay liquidated damages under Section 4.4(b), Purchaser shall deliver to Seller an electronic invoice on a monthly basis detailing any amounts Purchaser is entitled to receive from Seller as delay damages for the prior month. Not more than ten (10) Days after receipt of each such invoice, Seller shall pay to Purchaser, by wire transfer of immediately available funds to an account specified in writing by Purchaser or by any other means agreed to by the Parties in writing from time to time, the undisputed amount set forth as due in such invoice. The provisions of Section 2.5(d) shall apply, *mutatis mutandis*, to any disputed amounts with respect to such invoices.

(e) The Target Construction Start Date and the Major Equipment Procurement Date shall be extended on a day-for-day basis to the extent that Seller reasonably demonstrates to Purchaser that achievement of the Construction Start Date or the Major Equipment Procurement

Date is delayed by an Excused Delay; provided, that in no event shall any extensions of the Target Construction Start Date due to delays caused by an event of Force Majeure exceed ninety (90) Days in the aggregate.

(f) The Guaranteed Commercial Operation Date shall be extended on a day-for-day basis to the extent that Seller reasonably demonstrates to Purchaser that achievement of the Commercial Operation Date is delayed by an Excused Delay; provided, that in no event shall any extensions of the Guaranteed Commercial Operation Date due to delays caused by an event of Force Majeure exceed one hundred and eighty (180) Days in the aggregate.

(g) Seller shall not be permitted to achieve the Commercial Operation Date of the Project unless the Final Nameplate Capacity equals or exceeds [ninety percent (90%)] of the Planned Nameplate Capacity. If the Commercial Operation Date is achieved, but the Final Nameplate Capacity is less than one hundred percent (100%) of the Planned Nameplate Capacity, Seller shall have one hundred eighty (180) days after the Commercial Operation Date to install additional capacity such that the actual nameplate capacity of the Project is at least equal to but not greater than the Planned Nameplate Capacity, and Seller shall provide to Purchaser a new certificate substantially in the form attached as Exhibit F hereto specifying the new Final Nameplate Capacity. If, on the date that is one hundred eighty (180) days after the Commercial Operation Date, the Final Nameplate Capacity is less than one hundred percent (100%) of the Planned Nameplate Capacity, Seller shall make a one-time payment of liquidated damages to Purchaser in the amount of two hundred thousand dollars for each MW_{AC} (\$200,000/MW) that the Final Nameplate Capacity is below the Planned Nameplate Capacity. Notwithstanding anything to the contrary herein, unless otherwise approved in advance in writing by Purchaser, Seller shall not be allowed to declare the Commercial Operation Date any earlier than [____]. This Section 4.4(f) shall not limit Seller's ability to install additional nameplate capacity during the one hundred eighty (180) day period after the Commercial Operation Date consistent with the configurations set forth in Exhibit A hereto, including any excess capacity or overbuild contemplated therein. For sake of clarity, Seller shall not be permitted to repower the Project during the Term without the prior written consent of Purchaser (it being understood that any replacement of equipment for maintenance purposes shall not be deemed a repower).

4.5 *Certain Early Termination Events.*

(a) In the event that the Construction Start Date or the Major Equipment Procurement Date has not occurred on or before the date that is ninety (90) Days after the Target Construction Start Date or the Target Major Equipment Procurement Date, respectively, Purchaser shall be permitted to terminate this Agreement effective immediately upon written notice to Seller. In such instance, Seller will pay to Purchaser within ten (10) Business Days an amount equal to the Pre-COD Termination Payment, which shall be liquidated damages for such failure to achieve the Target Construction Start Date or the Target Major Equipment Procurement Date.

(b) In the event that the Commercial Operation Date has not occurred on or before the date that is one hundred eighty (180) Days after the Guaranteed Commercial Operation Date, Purchaser shall be permitted (without limiting Seller's obligations under Section 4.4(b)

regarding the payment of liquidated damages) to terminate this Agreement effective upon written notice to Seller. In such instance, Seller will pay to Purchaser within ten (10) Business Days an amount equal to the Pre-COD Termination Payment, which shall be liquidated damages for such failure to achieve the Guaranteed Commercial Operation Date.

(c) As used herein, the “Pre-COD Termination Payment” shall be an amount equal to [] Dollars (\$[]) per MW_{AC} of the Planned Nameplate Capacity. For the avoidance of doubt, (i) any Pre-COD Termination Payment shall be in addition to, and not net of, any delay liquidated damages paid or payable by Seller and otherwise without set-off or netting of any kind; provided, that if, as a result of failing to cause the Commercial Operation Date or occur on or before the Guaranteed Commercial Operation Date, Seller pays delay damages pursuant to Section 4.4(b) for a period greater than one hundred and eighty (180) days, the Pre-COD Termination Payment shall be reduced by the amount of such delay damages paid for any days in excess of one hundred eighty (180) days.

(d) In the event of a termination pursuant to Section 4.5(a), the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination; provided that such termination shall not discharge or relieve either Party from any obligation that by its terms requires or contemplates performance after such termination event, any obligation which has accrued prior to such termination or any indemnity obligations under Article 8 or the provisions of Section 11.1 or any liability for fraud, which provisions shall survive any termination of this Agreement.

(e) In the event of a termination of this Agreement by Purchaser pursuant to Section 4.5(a) or 4.5(b), for a period of twelve (12) months thereafter, Seller will not enter into an obligation or agreement to sell Delivered Energy from the Project to any third party, unless Seller first offers, in writing, to sell to Purchaser such Delivered Energy from the Project on the same material terms and conditions (excluding price, a proposal for which shall be communicated in such offer) as this Agreement (the “First Offer”). Within thirty (30) days of Purchaser’s receipt of such First Offer, Purchaser shall notify Seller if Purchaser is interested in accepting such First Offer and/or negotiating the pricing terms therefor. If Purchaser so notifies Seller of its interest, then the Parties shall negotiate in good faith for at least ninety (90) days in an effort to reach a mutually acceptable transaction. If notwithstanding such negotiations the Parties fail to reach such agreement within such ninety (90) day period, then Seller shall be permitted for the next one hundred and eighty (180) days to enter into an agreement on substantially similar or more favorable (to Seller) terms and pricing than the last offer made by Purchaser to Seller pursuant to this Section 4.5(e). If Seller fails to enter into such an agreement within such one hundred and eighty (180)-day period, then the provisions of this Section 4.5 shall once again apply.

ARTICLE 5 CREDIT SUPPORT

5.1 *Credit Support.*

(a) Seller shall furnish to Purchaser, within five (5) Business Days following the Effective Date, Credit Support in the amount of [_____] (\$[____]) per MW_{AC} of the Planned Nameplate Capacity (the “Pre-Commercial Operation Date Credit Support”). Prior to the Commercial Operation Date, Seller’s Credit Support shall not be subject to replenishment. Upon satisfaction of the credit support requirements for the period commencing with the Commercial Operation Date in accordance with Section 5.1(b), Purchaser will return the Pre-Commercial Operation Date Credit Support to Seller. Seller hereby waives any and all rights it may have to require Purchaser to provide financial assurances or security (including cash, letters of credit, bonds or other collateral) in respect of its obligations under this Agreement.

(b) Commencing with the Commercial Operation Date and continuing throughout the Term, Seller shall be obligated to (i) maintain an Investment Grade Credit Rating or (ii) furnish and maintain (including replenishment as necessary) Credit Support to Purchaser in the amount of [_____] Dollars (\$[____]) per MW_{AC} of the Final Nameplate Capacity. From and after the Commercial Operation Date, if the Credit Support drawn upon is in the form of cash or a letter of credit, then Seller shall replenish the Credit Support to the amount provided for in Section 5.1(b) within five (5) Business Days after Purchaser makes a draw on such Credit Support.

5.2 *Utilization of Credit Support.* Purchaser shall be entitled to draw upon and/or be paid from any Credit Support provided by Seller for any obligation of Seller arising under this Agreement that is not paid when due (subject to any applicable cure periods). Following the end of the Term, or any termination of this Agreement, and provided that all obligations of Seller under this Agreement or arising out of any expiration or earlier termination thereof have been satisfied in full, including with respect to all outstanding claims of Purchaser, the Credit Support provided pursuant to Section 5.1 shall be released to Seller within twelve (12) months after such termination or expiration of this Agreement; provided, that that if at such time there exist any pending claims against Seller, Seller’s Credit Support shall not be released until such claims have been finally resolved.

5.3 *Seller Credit Event.* Upon the occurrence of a Seller Credit Event, Seller shall have five (5) Business Days following the earlier to occur of (i) Seller’s knowledge of the occurrence of such Seller Credit Event and (ii) Seller’s receipt of notice from Purchaser of such Seller Credit Event, to remedy the situation by providing replacement Credit Support meeting the requirements of Section 5.1. In the event that Seller fails to provide such additional Credit Support within such five (5) Business Days, then an Event of Default will be deemed to have occurred and Purchaser will be entitled to the remedies set forth in Article 9 of this Agreement, without the application of any cure periods.

5.4 *Letter of Credit.* Any letter of credit provided pursuant to this Agreement shall be issued by a Creditworthy Bank in a form reasonably acceptable to Purchaser (it being agreed that the form of letter of credit attached as Exhibit E hereto is acceptable to Purchaser) and must provide, among other things, that the beneficiary of such letter of credit is entitled to draw the full amount of such letter of credit if: (i) the letter of credit has not been renewed or replaced within thirty (30) days prior to the expiration date of the letter of credit; or (ii) the issuer of the letter of credit is no longer a Creditworthy Bank and Seller has failed, within two (2) Business Days after

receipt of written notice thereof by Purchaser to replace such letter of credit with another letter of credit issued by a Creditworthy Bank, in a form acceptable to Purchaser, or other replacement Credit Support meeting the requirements of Section 5.1. Costs of a letter of credit shall be borne by Seller.

5.5 *Reporting Requirements.* If Seller is satisfying the Credit Support obligations of Section 5.1 by maintaining an Investment Grade Credit Rating, Seller shall furnish to Purchaser audited financial statements of Seller no later than one hundred twenty (120) days after the end of each fiscal year during the Term of this Agreement; provided, however that this obligation may be satisfied by the filing of such financial statements on the Securities and Exchange Commission's EDGAR or Canada's System for Electronic Document Analysis and Retrieval (SEDAR) site(s) as part of Service Provider's or such Affiliate's filing obligations under the Securities Exchange Act of 1934. If a guaranty has been provided to satisfy the Credit Support obligations of Section 5.1, then, in each case, Seller shall furnish to Purchaser audited financial statements of Seller or such guarantor, as applicable, no later than one hundred twenty (120) days after the end of each fiscal year during the Term of this Agreement; provided, however that this obligation may be satisfied by the filing of such financial statements on the Securities and Exchange Commission's EDGAR site as part of Seller's or such Affiliate's filing obligations under the Securities Exchange Act of 1934.

ARTICLE 6 DATA, METERING AND MEASUREMENT

6.1 *Metering Equipment.*

(a) Seller:

(i) Shall provide and maintain, at its cost, appropriate Meters, metering accuracy instruments, and associated measuring and recording equipment that adhere to all applicable CAISO SQMD, National Electrical Manufacturers Association and American National Standards Institute standards that are necessary to permit an accurate determination of the quantities of the hourly amount of Delivered Energy from the Project delivered to the Metering Point;

(ii) Shall provide and maintain, at its cost, appropriate Meters and associated measuring, recording, and communication equipment that adhere to all applicable Interconnection Agreement Counterparty standards and requirements for dispatchable intermittent renewable resources;

(iii) Shall exercise reasonable care in the maintenance and operation of any such Meters and equipment so as to assure to the maximum extent reasonably practicable an accurate determination of the quantities of the hourly (in five (5) minute intervals) Delivered Energy. Seller's Primary Meter shall be located at the Metering Point or on Seller's side of the Metering Point. Except as provided in Section 6.2, Seller's Primary Meter shall be used for quantity measurements under this Agreement; and

(iv) May install and operate at the Project check meters to measure Delivered Energy (“Seller’s Check Meters”).

(b) Seller shall make data from Seller’s Primary Meter and Seller’s Check Meter, if installed, readily available to Purchaser via internet link or Excel file. Purchaser may use data from Seller’s Check Meters if necessary to permit verification of the Delivered Energy under this Agreement.

(c) Purchaser may, at Purchaser’s option and its sole cost and expense, upon thirty (30) Days’ notice, request Seller to install and operate at the Project check meters to measure Delivered Energy (“Purchaser’s Check Meters”). To the extent practicable, Seller will install such meters outside of principal generating hours, but in the event operations are required to be curtailed during any period in order to install Purchaser’s Check Meters, such period shall be deemed a Purchaser Voluntary Curtailment Period and all energy that would have otherwise been made available at the Metering Point shall be treated as Deemed Delivered Energy for the purposes hereunder.

6.2 *Measurement of Delivered Energy.* Readings of Seller’s Primary Meter shall be conclusive as to the amount of Delivered Energy delivered to the Metering Point; provided, however, that in the event, and for so long as, Seller’s Primary Meter is out of service or is determined, pursuant to Section 6.3, to be registering inaccurately, measurement of Delivered Energy delivered to the Metering Point shall be determined by:

(a) Seller’s Designated Check Meter, if installed; or

(b) In the event that Seller’s Designated Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering inaccurately, Purchaser’s Check Meter if installed; or

(c) In the event that (A) Seller’s Designated Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering inaccurately and (B) Purchaser’s Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering inaccurately, by making a mathematical calculation of the Delivered Energy delivered to the Metering Point based on the actual wind and availability data during such period over which Seller’s Primary Meter was out of service or registering inaccurately; or

(d) In the event that (A) Seller’s Designated Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering inaccurately, (B) Purchaser’s Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering inaccurately, and (C) the Parties reasonably determine that the mathematical calculation of the Delivered Energy delivered to the Metering Point based on the actual [wind] [solar] and availability data is not reliable as to the period over which Seller’s Primary Meter was out of service or registering inaccurately, the Parties shall promptly meet and negotiate in good faith a method for determining Delivered Energy that is fair and reasonable in the circumstances.

6.3 *Testing and Correction.*

(a) The accuracy of Seller's Primary Meter and Seller's Check Meter, if installed, shall be tested and verified by Seller regularly, but in any event no less than every two (2) years. Except as set forth in Sections 6.3(d)(v) and 6.3(d)(vi), Seller shall be responsible for all costs, including inspection and testing costs, in connection with Seller's Primary Meter and Seller's Check Meter and such cost is included in the Contract Rate.

(b) The accuracy of Purchaser's Check Meter, if installed shall be tested and verified by Purchaser regularly, but in any event no less than every two (2) years. Except as set forth in Sections 6.3(d)(v) and 6.3(d)(vi), Purchaser shall be responsible for all costs, including inspection and testing costs, in connection with Purchaser's Check Meter.

(c) Each Meter shall be accurate within a zero decimal five percent (0.5%) variance.

(d) If, for any reason at any time during the Term, either Party disputes a Meter's accuracy or condition:

(i) The Party disputing the Meter's accuracy shall notify the other Party in writing;

(ii) The Party receiving such notice shall, within five (5) Days after receiving such notice, advise the other Party in writing as to its position concerning the Meter's accuracy and reasons for taking such position;

(iii) If the Parties mutually and reasonably determine that the Meter is registering outside the zero decimal five percent (0.5%) variance provided for in paragraph (c) above, then such Meter shall be deemed to be registering inaccurately for purposes of Section 6.2;

(iv) If, within fifteen (15) Days after receipt of the notice required by clause (ii) above with respect to a given Meter, the Parties are unable to mutually agree, through reasonable negotiations, on the accuracy or condition of such Meter, then either Party may submit such Dispute to an unaffiliated third-party certified meter testing company mutually acceptable to the Parties to test the Meter, and Seller shall provide such third party reasonable access to the Project for purposes of testing such Meter;

(v) Following the third-party testing of a Meter provided for in Section 6.3(d)(iv), should such Meter be found (in a report distributed to both Parties) to be registering within the permitted zero decimal five percent (0.5%) variance, the disputing Party shall bear the cost of inspection and such Meter shall be deemed accurate for the purposes of calculating the Delivered Energy pursuant to Section 6.2;

(vi) Following the third-party testing of a Meter provided for in Section 6.3(d)(iv), should such Meter be found (in a report distributed to both Parties) to

be registering outside the permitted zero decimal five percent (0.5%) variance, the non-disputing Party shall bear the cost of inspection and such Meter shall be deemed not accurate for the purpose of calculating the Delivered Energy pursuant to Section 6.2; and

(vii) Any repair or replacement of a Meter owned by Seller shall be made at the expense of Seller as soon as practicable, based on the third-party testing company's report. Any repair or replacement of a Meter owned by Purchaser shall be made at the expense of Purchaser as soon as practicable, based on the third-party testing company's report.

(e) If, upon testing, any of the Meters used to determine the amount of Delivered Energy is found to be in error by more than the permitted zero decimal five percent (0.5%) variance, the quantity of Delivered Energy measured since the previous test of such Meter shall be adjusted to correspond to the corrected measurements, pursuant to Section 6.2. If the difference of the payments actually made by Purchaser minus the adjusted payment is a positive number, Seller shall credit the difference, without interest, to Purchaser on the next invoice issued by Seller. If the difference is a negative number, Purchaser shall pay the difference, without interest, to Seller on the next invoice issued by Seller. Such payment or credit, as applicable, shall be made in accordance with Section 2.5.

6.4 *Meter Data and Records.*

(a) Seller shall provide Purchaser a report on the day immediately following the day that such data becomes available to Seller, indicating Seller's hourly delivery of Energy to Delivery Point and fifteen-minute interval data for the prior day and, if the Parties participate in the Energy Imbalance Market, Seller's five-minute interval data. Seller's report of Energy delivery shall be sent by either: (i) a file attached to an e-mail sent to Purchaser; (ii) a secure FTP site to which Purchaser is granted access; or (iii) other method mutually acceptable to the Parties. Such file shall use comma separated value (CSV) format, or such other mutually acceptable format.

(b) Purchaser or its agent shall have the right to be present whenever Seller reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts any of Seller's equipment used in measuring or checking the measurement of the amount of Energy delivered to the Metering Point. Seller shall give at least two (2) weeks' notice to Purchaser in advance of calibrating the meters, and three (3) days' notice to Purchaser in advance of taking other action that would materially affect the accuracy of the meter unless Prudent Operating Practices necessitate executing such action upon shorter notice or unless otherwise mutually agreed by Seller and Purchaser. The records from the measuring equipment shall remain the property of Seller, but, upon request, Seller shall submit to Purchaser its records and charts, together with calculations therefrom, for inspection, verification and copying, subject to return within ten (10) Days after receipt thereof. Seller agrees to retain such records for not less than twenty-four (24) months after the expiration or termination of this Agreement.

6.5 *Data.* Measuring equipment is installed at the Project, which has the capability of measuring and recording [wind]/[solar] data 24 hours per day. Seller shall provide Purchaser

historical meteorological and generation data and real time access to Seller's historian which contains the data from the Project's SCADA system. The method by which Seller provides [wind]/[solar] data to Purchaser may be amended by mutual agreement of the Parties from time to time. For clarity, Service Provider's obligation to maintain the data referenced in this Section 6.5 shall be subject to the recordkeeping and audit provisions contained in Section 11.6 of this Agreement.

ARTICLE 7 REPRESENTATIONS, WARRANTIES, AND COVENANTS

7.1 *Seller's Representations and Warranties.*

(a) Seller represents and warrants as follows:

(i) Seller is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of [____], and authorized to conduct business in [____];

(ii) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;

(iii) Seller has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;

(iv) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval (except for those approvals set forth in Section 4.2) that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Seller or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) With the exception of the actions set forth in Section 4.2, Seller has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(vi) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Seller or Seller's parent, or to its knowledge threatened against Seller;

(vii) There are no actions, proceedings, suits, rulings or investigations pending or, to Seller's knowledge, threatened against Seller or any of its Affiliates that could be reasonably expected to adversely affect Seller's ability to perform its obligations under this Agreement;

(viii) This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity; and

(ix) Seller owns, and will at all times during the Term, own or otherwise have all rights necessary to produce and sell to Purchaser the Delivered Energy and Attributes as contemplated by this Agreement, free and clear of any lien, encumbrance, claim of infringement, misappropriation or any violation of the rights of other Persons, as needed at the then-current stage of development or operation of the Project.

7.2 *Purchaser's Representations and Warranties.*

(a) Purchaser represents and warrants as follows:

(i) Purchaser is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Washington;

(ii) Purchaser has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;

(iii) Purchaser has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;

(iv) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by Purchaser with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Purchaser or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Purchaser is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) Purchaser has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(vi) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Purchaser, or to its knowledge threatened against Purchaser;

(vii) There are no actions, proceedings, suits, rulings or investigations pending or, to Purchaser's knowledge, threatened against Purchaser or any of its Affiliates that could be reasonably expected to adversely affect Purchaser's ability to perform its obligations under this Agreement; and

(viii) This Agreement is a legal, valid and binding obligation of Purchaser enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

7.3 *Seller's Covenants.*

(a) Seller covenants that Seller shall comply with all Applicable Law, including all applicable anti-corruption, anti-bribery, anti-money laundering, anti-terrorism and economic sanction and anti-boycott laws.

(b) Seller shall notify Purchaser promptly, but in no event later than ten (10) Business Days, after Seller or its representatives have actual knowledge of any adverse legal action or lawsuit, investigation, or concerted media campaign against or involving the Project or Seller that could reasonably be expected to negatively affect the reputation of the Project, Seller or Purchaser in connection thereto (each, a "Reputational Event"). At the request of Purchaser, Seller shall communicate and cooperate with Purchaser on its response(s) to such a Reputational Event. Seller shall consider in good faith any reasonable comments provided by Purchaser in the course of developing documentation related to Seller's response to such Reputational Event.

7.4 *Labor.*

(a) Seller shall make a good faith effort to endeavor to hire as direct or indirect subcontractors local workers (such as M/WBE/VETs) during construction of the Project and as permanent employees or as direct or indirect subcontractors for the operation of the Project and performance of Seller's obligations under the terms of this Agreement; provided and only to the extent that Seller or its Affiliates, as applicable, determine that (i) contracting with any such persons to perform such work is cost and schedule effective with respect to the construction and/or operation of the Project, (ii) such persons satisfy Seller's or its Affiliate's, as applicable, then current qualifications, site safety policies, background screening, and (iii) such persons have obtained all applicable certifications that Seller or its Affiliates require.

(b) Seller shall (i) satisfy the Prevailing Wage and Apprenticeship Requirements applicable to the Project and (ii) execute an engineering, procurement and construction (“EPC”) contract for the Project that Washington Administrative Code, Title 296, Chapter 140 (“WAC 296-140”), which requires that the EPC contractor utilize a Project Labor Agreement, Community Workforce Agreement or Collective Bargaining Agreement (each of which as may be defined or amended in WAC 296-140), as applicable, in a reasonable and customary form, for major construction activities associated with the construction of the Project, and (iii) satisfy the requirements of Washington House Bill 1589 (“HB 1589”) as related to the Project. For the avoidance of doubt, satisfying HB 1589 specifically includes the requirement that the Project will be constructed by a prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements.

7.5 *Certain Reporting Requirements.*

(a) Seller shall use commercially reasonable efforts to furnish no later than April 1 of each year and upon Purchaser’s reasonable request (but in any event not more than twice annually), a report documenting how it has executed the Project in accordance with the Seller’s Customer Benefits Plan provided to Purchaser. Seller shall use commercially reasonable efforts to include in such report: the application of the labor standards in RCW 82.08.962 and 82.12.962, and any rules and regulations of the Washington Utilities and Transportation Commission thereunder applicable to the Project, and compliance with WAC 480-107-075; local tax revenues generated by the Project; land use payments associated with the Project; host community payments for those municipalities or other local administrative divisions that host the Project; activities undertaken to support development of project-related opportunities, including opportunities for women-, minority-, disabled-, and veteran-owned businesses; activities associated with facilitating a clean energy workforce, including job training, career awareness, and educational opportunities; charitable donations; and any other non-energy benefits discussed in the Seller’s Customer Benefits Plan. Purchaser shall have the right to review and provide feedback (if any) on the report. The report must also describe and document how Seller has implemented commitments it has made it in its Customer Benefit Plan and explain any material variation from those commitments. Such report shall also include the prior years’ information.

(b) Seller shall use commercially reasonable efforts to include in such report the reporting of metrics associated with the customer benefit indicator “increase in quality and quantity of clean energy jobs” in PSE’s 2021 Clean Energy Implementation Plan (“CEIP”). Seller shall use commercially reasonable efforts to include in such report: the number of jobs created by the project; the number of local workers; the number of part-time and full-time jobs; the range of wages paid to workers; the extent to which additional benefits are offered; the use of apprenticeship labor; the demographics of workers; and any other relevant metrics or information that relates to the quality or quantity of jobs associated with the project. Indicators and metrics may change based on final approval of PSE’s 2021 CEIP and subsequent CEIPs, at which time Purchaser will inform Seller, and Seller shall reasonably cooperate to revise indicators and metrics, as necessary.

(c) Throughout the development, construction, and operation of the Project, Seller will continue to conduct stakeholder and community engagement to inform the public and potentially impacted tribes, including completing desktop cultural resource studies in the project area prior to commencing construction, about activities being undertaken by Seller related to the Project and gain community and stakeholder input on how these activities can benefit or how burdens can be reduced in these communities. Seller will make commercially reasonable efforts to avoid impacts to sensitive cultural sites identified in the cultural resource studies.

(d) Seller will provide updates to Purchaser on stakeholder and community engagement activities undertaken to support the Project, along with feedback provided by communities and other stakeholders, Seller's reasonable attempts to address this feedback, and plans for future engagement activities. Seller will provide these updates on a semi-annual basis until the Commercial Operation Date of the Project has been achieved and following the Commercial Operation Date, upon Purchaser's reasonable request and not more than once annually by April 1.

(e) In its reporting and updates described above, Seller will use commercially reasonable efforts to present metrics, benefits and burdens that specifically apply to Highly Impacted Communities, and Vulnerable Populations as they are defined in WAC 480-100-605 and according to the criteria in Purchaser's CEIP. Purchaser will keep Seller informed as these criteria are finalized and further refined, and Purchaser will provide commercially reasonable feedback and guidance to Seller on the methodology Seller uses for tracking those metrics, benefits and burdens. For projects located outside of Washington State, Seller will use commercially reasonable efforts to present metrics, benefits and burdens that will apply to disadvantaged communities defined and identified in the Climate and Economic Justice Screening Tool (CEJST) created by the Council on Environmental Quality as directed by Executive Order 14008 on Tackling the Climate Crises at Home and Abroad.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

8.1 *General Indemnity.*

(a) Indemnity by Seller. Subject to the provisions of Section 11.9, Seller shall release, protect, defend, indemnify and hold harmless Purchaser, its Affiliates, directors, officers, employees, agents and representatives, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from (i) the Energy and Attributes prior to Seller's delivery of such Energy and Attributes to the Delivery Point, or (ii) any property damage, bodily injuries or death suffered by any third party Person (including, without limitation, employees of the Parties) related to, arising from, or connected to the performance or non-performance by Seller of its obligations hereunder.

(b) Indemnity by Purchaser. Subject to the provisions of Section 11.9, Purchaser shall release, protect, defend, indemnify and hold harmless Seller, its Affiliates, directors, officers, employees, agents and representatives, from and against all claims, demands,

causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from (i) the Delivered Energy and Attributes once sold and delivered to Purchaser at the Delivery Point, or (ii) any property damage, bodily injuries or death suffered by any third party Person (including, without limitation, employees of the Parties) related to, arising from, or connected to the performance or non-performance by Purchaser of its obligations hereunder.

(c) Comparative Negligence. The indemnification provisions of this Section 8.1 shall apply notwithstanding the negligent acts or omissions of the indemnitee, but the indemnitor's liability to the indemnitee shall be reduced proportionately to the extent that a negligent act or omission of the indemnitee contributed to the loss, injury or property damage. Further, no indemnitee shall be indemnified hereunder for its loss, liability, injury and damage resulting from its gross negligence, fraud or willful misconduct.

(d) Notice and Limitation of Claims.

(i) If any Person seeking indemnification hereunder (an "Indemnified Party") believes that a claim, demand or other circumstance exists that has given or may reasonably be expected to give rise to a right of indemnification under this Section 8.1(d) (whether or not the amount thereof is then quantifiable) against a Party (the "Indemnifying Party"), such Indemnified Party shall assert its claim for indemnification by giving written notice thereof (a "Claim Notice") to the Indemnifying Party within ten (10) Business Days following receipt of notice of such claim, suit, action or proceeding by such Indemnified Party. Each Claim Notice shall describe the claim in reasonable detail. The failure of the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of liability hereunder except (and then only) to the extent that the defense of such claim, suit, action or proceeding is prejudiced by the failure to give such notice.

(ii) Upon receipt by an Indemnifying Party of a Claim Notice, the Indemnifying Party shall be entitled to (i) assume and have sole control over the defense of such action or claim at its sole cost and expense and with its own counsel if it gives notice of its intention to do so to the Indemnified Party within thirty (30) days of the receipt of such notice from the Indemnified Party; provided, that the Indemnifying Party's retention of counsel shall be subject to the written consent of the Indemnified Party if such counsel creates a conflict of interest under applicable standards of professional conduct or an unreasonable risk of disclosure of Confidential Information concerning an Indemnified Party, which consent shall not be unreasonably withheld, conditioned, or delayed; and (ii) negotiate a settlement or compromise of such action or claim; provided, that (A) such settlement or compromise shall include a full and unconditional waiver and release of all Indemnified Parties (without any cost or liability of any nature whatsoever to such Indemnified Parties) and (B) any such settlement or compromise shall be permitted hereunder only with the written consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed.

(iii) If the Indemnifying Party elects to defend any such action or claim, then the Indemnified Party shall be entitled to participate in such defense with counsel reasonably acceptable to the Indemnifying Party, at such Indemnified Party's sole cost and expense. Notwithstanding the foregoing, if (i) a claim is primarily for non-monetary damages against the Indemnified Party or seeks an injunction or other equitable relief that, if granted, would reasonably be expected to be material to the Indemnified Party, (ii) the Indemnified Party shall have determined in good faith that an actual or potential conflict of interest makes representation of the Indemnifying Party and the Indemnified Party by the same counsel or the counsel selected by the Indemnifying Party inappropriate, or (iii) the claim is a criminal proceeding, then in each case the Indemnified Party may, upon notice to the Indemnifying Party, assume the exclusive right to defend, compromise and settle such claim and the reasonable fees and expenses of the Indemnified Party's separate counsel shall be borne by the Indemnifying Party to the extent the claim is indemnifiable hereunder. Notwithstanding anything to the contrary herein, for sake of clarity the Parties agree that the foregoing provisions shall not be construed so as to permit the Indemnified Party to control or assume the defense of any action, lawsuit, proceeding, investigation, demand or other claim brought against the Indemnifying Party concurrently with or in a joint proceeding in respect of any claim that is the subject of an indemnification claim hereunder by the Indemnified Party.

(iv) If, within thirty (30) days of receipt from an Indemnified Party of any Claim Notice, the Indemnifying Party (i) advises such Indemnified Party in writing that the Indemnifying Party shall not elect to defend, settle or compromise such action or claim or (ii) fails to make such an election in writing, such Indemnified Party may, at its option, defend, settle or otherwise compromise or pay such action or claim.

(v) Each Indemnified Party shall make available to the Indemnifying Party all information reasonably available to such Indemnified Party relating to such action or claim, except as may be prohibited by Applicable Law. In addition, the Parties shall render to each other such assistance as may reasonably be requested in order to ensure the proper and adequate defense of any such action or claim. The Party in charge of the defense shall keep the other Party fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto.

8.2 Insurance.⁵

(a) Seller, at its own cost and expense, shall maintain or cause to maintain, and keep in full force and effect from the date hereof through the later of the date of expiration or termination hereof, the following insurance coverage:

(i) Workers' Compensation Insurance for statutory obligations imposed by applicable state laws, and employer's liability insurance with a minimum limits of liability bodily injury by accident of one million dollars (\$1,000,000) for each accident;

⁵ **Note to Draft:** Insurance types and limits subject to ongoing review and comment by PSE based on project specifics.

bodily injury by disease one million dollars (\$1,000,000) policy limit; and bodily injury by disease one million dollars (\$1,000,000) each employee;

(ii) Commercial general liability insurance, including premises and operations, bodily injury, broad form property damage, products/completed operations, contractual liability and independent contractors' protective liability all with minimum limits of not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) annual aggregate, and two million dollars (\$2,000,000) products and completed operations aggregate;

(iii) Commercial Automobile Insurance with a minimum limit of one million dollars (\$1,000,000) combined single limit per accident with respect to bodily injury, property damage or death;

(iv) Umbrella excess liability coverage with a minimum limit of ten million dollars (\$10,000,000) per occurrence and ten million dollars (\$10,000,000) annual aggregate. The combined liability limits may be satisfied through a combination of primary, umbrella/excess, and self-insured retention. Any self-insured retention is subject to the prior written approval by Purchaser, which approval shall not be unreasonably withheld;

(v) Builder's All-Risk Insurance with a minimum limit based on the total replacement cost of the Project, provided that such Builder's All-Risk Insurance shall only be required during construction of the Project;

(vi) Commencing on the Commercial Operation Date, All-Risk Property Insurance covering physical loss or damage to the Project with minimum limits based on the total replacement cost of the Project;

(vii) Seller and/or all of its contractors (including subcontractors) shall have professional liability coverage with an aggregate limit of not less than three million dollars (\$3,000,000), which may be maintained by a consultant or contractor engaged by or on behalf of Seller;

(viii) Business interruption insurance which amount shall cover Seller's continuing or increased expenses resulting from full interruption for a period of not less than six (6) calendar months and a time deductible of no more than sixty (60) days; and

(ix) Pollution liability insurance insuring against liability arising out of activities contemplated hereunder or as might be required by federal, state, regional, municipal and local laws, with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate. Seller may satisfy this requirement under commercial general liability insurance and excess or umbrella liability insurance policies if such policies provide coverage as is provided for under a pollution liability insurance policy. Purchaser shall have the right to review such coverage within

such policy and accept the terms or require additional coverage in Purchaser's reasonable discretion.]

(b) All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date hereof through the later of the expiration or termination hereof, except as provided in Section 8.2(a)(v) or 8.2(a)(vi). If any insurance policy required to be obtained hereunder is on a "claims made" basis, Seller shall either maintain either "tail" coverage or continuous "claims made" liability coverage for a minimum of six (6) years following the expiration of this Agreement.

(c) Purchaser, its officers, agents and employees shall be named as additional insured on all commercial general liability, auto liability, and umbrella/excess liability insurance policies required by the specifications hereunder to be maintained by or on behalf of Seller.

(d) All policies with respect to insurance maintained by Seller, except for the professional liability policy, shall waive any right of subrogation of the insurers hereunder against Purchaser, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

(e) All insurance coverage required by this Agreement shall be issued by an insurer with an A.M. Best's rating of not less than "A-VII" or such other insurer as is reasonably acceptable to Purchaser.

(f) Subject to the continued maintenance of the minimum insurance limits set forth in this Section 8.2, Seller, or Seller's Affiliate, retains the right to make reasonable decisions regarding its insurance and risk financing programs; including insurance terms and conditions, levels of deductibles/retentions and available limits of coverage – based on insurance market conditions, available capacity and/or other events that could impact the Seller's, or Seller's Affiliate's, overall cost of insuring risk.

(g) Seller shall endeavor to notify Purchaser of any material change in, or cancellation of, the insurance required by this Section 8.2 at least thirty (30) Days prior to the effective date of such change or cancellation except in the case of non-payment of premiums in which case the notice shall be ten (10) Days or as soon as reasonably known.

(h) Within fifteen (15) Days after the date hereof, Seller shall provide to Purchaser and thereafter maintain with Purchaser a current certificate of insurance verifying the existence of the insurance coverage required by this Agreement.

ARTICLE 9 DEFAULTS AND REMEDIES

9.1 *Events of Default.*

(a) Each of the following shall constitute an "Event of Default" hereunder:

(i) Failure by a Party to make any payment required when due if such failure is not remedied within ten (10) Business Days after receipt by the Defaulting Party of written notice of such failure, provided such payment is not the subject of a Dispute;

(ii) Failure by a Party to perform any other material obligation hereunder (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after receipt by the Defaulting Party of written notice of such failure; provided that if such failure is not reasonably capable of being cured within such thirty (30) day period but is reasonably capable of cure, then for so long as the Defaulting Party has initiated and is diligently attempting to effect a cure, such Defaulting Party's cure period shall extend for an additional sixty (60) days;

(iii) Any representation or warranty made hereunder by a Party shall have been false in any material respect when made and is not remedied within thirty (30) days after receipt of written notice of such failure;

(iv) Either Party (A) makes an assignment for the benefit of its creditors, (B) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law, (C) has such petition filed against it and such petition is not withdrawn or dismissed for sixty (60) days after such filing, (D) becomes insolvent, or (E) is unable to pay its debts when due;

(v) Seller fails to establish and maintain the Credit Support as required by Article 5;

(vi) [Seller's failure to cause the Project to achieve an average Availability Factor of at least eighty five percent (85%) for any two Contract Years in any two (2) successive Contract Year period commencing after the first Contract Year];⁶

(vii) [Seller's failure to achieve eighty percent (80%) of the Forecasted Annual Production in any two (2) successive Contract Year period commencing after the first Contract Year]; or⁷

(viii) Following an assignment under Section 11.2(c)(iii), if applicable, the assignee or its guarantor fails to maintain in Investment Grade Credit Rating and Purchaser fails to provide a replacement guaranty from a guarantor with an Investment Grade Credit Rating or other security acceptable to Seller in its reasonable discretion within ten (10) Business Days after receipt of notice thereof.

9.2 Remedies.

⁶ **Note to Draft:** Performance EOD for wind PPAs.

⁷ **Note to Draft:** Performance EOD for solar PPAs.

(a) Upon the occurrence of an Event of Default by a Party (the “Defaulting Party”), the other Party (the “Non-Defaulting Party”) shall have the following rights and remedies:

(i) To terminate this Agreement by providing written notice to the Defaulting Party of its exercise of its termination rights, which termination shall be effective twenty (20) days after the day such notice is deemed to be delivered under Section 11.5 (the “Early Termination Date”);

(ii) To suspend performance of its obligations and duties hereunder immediately upon delivering written notice to the Defaulting Party of its intent to exercise its suspension rights;

(iii) To withhold any payments due to the Defaulting Party under this Agreement;

(iv) To recover in connection with such termination the termination payment set forth in Section 9.3;

(v) To exercise any rights pursuant to Section 5.2 to draw upon any Credit Support provided by the Defaulting Party (if applicable); and

(vi) To, subject to the express limitations on remedies set forth in this Agreement, pursue any other remedy given under this Agreement or Applicable Law, now or hereafter existing at law or in equity or otherwise.

(b) Right of First Offer.

(i) If Purchaser terminates this Agreement prior to the Commercial Operation Date in accordance with Sections 4.5 or 9.2(a) because of an early termination event or an Event of Default of Seller, as applicable, then for a period of twelve (12) months from the date upon which Purchaser notifies Seller of such termination, neither Seller, nor its successors and assigns, nor their respective Affiliates will enter into an obligation or agreement to sell or otherwise transfer any Energy or Attributes from the Project to any third party, unless: (A) Seller first offers, in writing (such writing, an “Offer Notice”), to negotiate with Purchaser with respect to the sale of such Energy and Attributes from the Project; and (B) Purchaser declines to engage in negotiations with respect to such sale (or fails to respond to Seller’s Offer Notice within the applicable time period set forth in Section 9.2(b)(ii) below), or the Parties fail to reach agreement on the terms and conditions of such sale within the Negotiation Period set forth in Section 9.2(b)(ii) below. Seller’s Offer Notice shall include Seller’s reasonably detailed proposed terms and conditions for the sale of such Energy and Attributes.

(ii) If Purchaser accepts Seller’s offer to engage in negotiations, then Purchaser will notify Seller of such acceptance no later than thirty (30) days after Purchaser’s receipt of the Offer Notice, and the Parties will enter into negotiations with respect to a new power purchase agreement for not more than one hundred and twenty

(120) days after the date of Seller's receipt of Purchaser's notification of acceptance (the "Negotiation Period"). If Purchaser does not accept Seller's offer within such thirty (30) day period or if, notwithstanding the reasonable efforts of the Parties, the Parties do not enter into a new power purchase agreement within the Negotiation Period, Seller may enter into an agreement to sell all or a portion of the Energy or Attributes to any third party; provided, that: (A) such third-party sale must be on terms no less favorable to Seller than the most recent terms offered by Seller to Purchaser; and (B) if Seller does not enter into an agreement for the sale of such Energy or Attributes within one hundred eighty (180) days after Purchaser's rejection (or deemed rejection) of Seller's Offer Notice or, if applicable, the expiration of the Negotiation Period, then the Energy and Attributes may not be sold unless Seller again complies with the obligations regarding the first offer for the benefit of Purchaser contemplated by this Section 9.2(b), subject to the twelve (12) month limitation thereon set forth in Section 9.2(b)(i) above.

(c) Each Party agrees that it 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 hereof. "Commercially reasonable efforts" by Seller shall require Seller to use commercially reasonable efforts to maximize the price for Energy and Attributes received by Seller from third parties.

(d) The rights and remedies of a Party pursuant to this Article 9 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

9.3 *Event of Default Termination Payment Calculation.*

(a) Upon termination of this Agreement as a result of an Event of Default, and except as otherwise contemplated with respect to a termination pursuant to Section 4.5 (as to which the Pre-COD Termination Payment shall apply), the Non-Defaulting Party shall calculate an amount (the "Termination Payment") equal to the aggregate of (i) the Market Value of this Agreement to the Non-Defaulting Party, plus (ii) any costs incurred by the Non-Defaulting Party as a result of the termination of this Agreement due to the Defaulting Party's default, plus (iii) any unpaid amounts owing under this Agreement from the Defaulting Party to the Non-Defaulting Party which arose prior to the Early Termination Date, minus (iv) any unpaid amounts owing under this Agreement from the Non-Defaulting Party to the Defaulting Party. If the Termination Payment is a positive amount, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party. If the Termination Payment is a negative amount, the amount of the Termination Payment shall be deemed to be zero and no payment shall be made to either Party.

(b) It is understood and agreed that it is not necessary for the Non-Defaulting Party to enter into a Replacement Contract to determine the per MWh price under a Replacement Contract and if a Replacement Contract is not entered into by the Non-Defaulting Party, the per MWh price with respect to a Replacement Contract shall be the fair market price of energy (including the price for reasonably comparable Attributes associated therewith) that would have been payable under a Replacement Contract as determined in a commercially reasonable manner by the Non-Defaulting Party. In determining the per MWh price when a Replacement Contract is

not entered into, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.

(c) For purposes of calculating Market Value under this Section 9.3, (X) the quantity of energy used in the calculation shall be based upon reasonable assumptions regarding the future operation of the Project as determined by the Non-Defaulting Party in good faith, (Y) commercially reasonable adjustments to the Replacement Contract shall be made by the Non-Defaulting Party to take into account, among other possible commercially material differences, differences due to length of term, capacity factors, Attributes and the location of the output delivery point(s) under the Replacement Contract compared to the Delivery Point hereunder, and (Z) the discount rate to be used to determine present value as of the Early Termination Date of each future payment amount shall be the sum of one hundred (100) basis points plus the yield reported on page “USD” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) on the Early Termination Date for United States government securities having a maturity reasonably equivalent to the then remaining Term of this Agreement.

(d) In the event of termination pursuant to this Section 9.3, the Parties shall not incur any additional liability to each other as a result of such termination; provided that such termination shall not discharge or relieve either Party from any obligation that by its terms requires or contemplates performance after such termination event, and any obligation that has accrued prior to such termination or any indemnity obligations under Article 8 or the provisions of Section 11.1, which provisions shall survive any termination of this Agreement, but shall not effect the remedies provided for under Section 9.2.

ARTICLE 10 FORCE MAJEURE

10.1 *Force Majeure Generally.*

(a) The performance of any obligation required hereunder shall be excused during the continuation of any Force Majeure event suffered by the Party whose performance is hindered in respect thereof, to the extent such Force Majeure event prevents the affected Party from performing its obligations under this Agreement. The affected Party’s time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure event shall be extended by a period of time reasonably necessary to compensate for the delay caused by the Force Majeure event, subject to any limitations on such extension provided for in this Agreement; provided, that the Party experiencing the delay or hindrance shall use diligent efforts to remedy or overcome the Force Majeure event and the suspension of performance shall be of no greater scope and of no longer duration than that required by the Force Majeure. The affected Party shall (i) as soon as reasonably practicable notify the other Party in writing describing in detail the occurrence of such Force Majeure event and the anticipated period of delay, but in no event shall the

notification take longer than forty-eight (48) hours after the Party has determined that a Force Majeure event has occurred; (ii) within five (5) Business Days after the Party has knowledge of the occurrence of the Force Majeure event, provide a written explanation of the Force Majeure event and its effect on the affected Party's performance; and (iii) thereafter provide periodic written reports (no less often than weekly) on the status of the affected Party's efforts to remedy its inability to perform and a good faith estimate of when it will be able to resume performance, in each case to the extent known at the time of the report; provided that, if the affected Party fails to notify or provide a written report to the other Party within the applicable timeframes set forth above, the affected Party shall not be entitled to relief as a result thereof until such time as the affected Party has remedied such failure and, in such case and subject to all limitations set forth in this Article 10, the affected Party shall not be entitled to relief for the period of time from when the applicable notice or report was required to be delivered pursuant to this Section 10.1 to the time when the applicable notice or report was actually delivered.

(b) If after the Commercial Operation Date any Force Majeure event substantially prevents a Party's performance under this Agreement for more than one hundred eighty (180) consecutive Days, then provided such Force Majeure shall be continuing to substantially prevent a Party's performance under this Agreement, the non-affected Party may terminate this Agreement upon notice to the other Party, but such termination shall be without liability of either Party except on account of amounts accrued prior to the date of such termination. If the non-affected Party has not terminated this agreement one hundred eighty (180) days after it is entitled to do so due to extended Force Majeure affecting the other Party, and such Force Majeure shall be continuing to substantially prevent a Party's performance under this Agreement, then the affected Party may also terminate this Agreement without liability of either Party except on account of amounts accrued prior to the date of such termination. Each Party suffering a Force Majeure event shall take, or cause to be taken, such action as may be necessary to overcome or otherwise to mitigate, in all material respects, the effects of any Force Majeure event suffered by either of them and to provide written notice to the other Party of such actions, and to resume performance hereunder as soon as practicable under the circumstances (and for sake of clarity any accrued termination right described in the immediately prior sentence shall not limit this obligation).

10.2 Force Majeure Defined.

(a) As used herein, "Force Majeure" shall mean any event or circumstance which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement and which by the exercise of reasonable 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, and (iii) 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.

(b) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:

(i) acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, theft, vandalism, public disorders, rebellion, violent demonstrations, revolution, sabotage or terrorist action;

(ii) any effect of unusually severe natural elements, such as fire, subsidence, earthquakes, floods, tornadoes, storms, lightning, or similar cataclysmic occurrence or other unusual natural calamities;

(iii) except as set forth in Section 10.2(c)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);

(iv) explosion or accident;

(v) governmental action or inaction;

(vi) emergencies (including but not limited to transmission load relief events and minimum generation emergencies) declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy or limiting the production of Energy, including Energy to be delivered pursuant to this Agreement; or

(vii) Impacts associated with any pandemic or epidemic, but only to the extent such impacts otherwise meet the definition of Force Majeure included herein.

(c) Force Majeure shall not be based on:

(i) Purchaser's or Seller's inability to obtain transmission service and the unavailability or interruption of transmission service (unless the unavailability or the interruption was the result of a System Emergency or otherwise caused by an occurrence that itself would qualify as a Force Majeure event);

(ii) Purchaser's inability economically to use or resell the Delivered Energy or the Attributes purchased hereunder;

(iii) Seller's inability to operate Project economically notwithstanding the existence of this Agreement;

(iv) Seller's ability to sell the Delivered Energy or the Attributes at a price greater than the price set forth in this Agreement;

(v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Purchaser pursuant to this Agreement;

(vi) a strike, work stoppage or labor dispute arising out of or limited only to any one or more of Seller, Seller's Affiliates, or any other third party employed by Seller to work on the Project;

(vii) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party; or

(viii) any breakdown, degradation or malfunction of the Project's equipment that is not directly caused by an independent event of Force Majeure.

ARTICLE 11 MISCELLANEOUS⁸

11.1 *Confidential Information.*

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Project, that they consider confidential and proprietary (the "Confidential Information"). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "Disclosing Party") may make such Confidential Information available to the other (each, a "Receiving Party") subject to the provisions of this Section 11.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as permitted hereunder or required by Applicable Law, subject to the restrictions set forth below.

(c) The restrictions of this Section 11.1 do not apply to:

(i) Release of this Agreement or any part or summary hereof to any Governmental Authority required for obtaining any approval or making any filing pursuant to Section 4.2; provided, that (a) Seller agrees to cooperate in good faith with Purchaser to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law and (b) Seller shall provide reasonable notice to Purchaser, prior to disclosure (if not prevented by law), of the time and scope of the intended disclosure in order to provide Purchaser an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure;

⁸ **Note to Draft:** PSE reserves the right to include additional provisions relating to cyber security.

(ii) Information which is, or becomes, publicly known or generally available to the public other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party prior to the date hereof;

(iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which the Receiving Party determines is required to be disclosed pursuant to Applicable Law; provided, the Receiving Party shall provide reasonable notice to the Disclosing Party of the time and scope of the intended disclosure.

(d) Notwithstanding the foregoing, the Parties may provide any Confidential Information: (i) to a Transmission Provider as required for scheduling, settlement and billing, (ii) to any Person with review rights specified in other provisions of this Agreement and (iii) on a need-to-know basis to agents, trustees, employees, managers, officers, representatives, consultants, accountants, financial advisors, experts, legal counsel, other professional advisors to the Parties, their Affiliates, and prospective investors and Lenders to either Party, provided that in the case of clauses (ii) and (iii), such Persons have been advised of the confidential nature of the information and have agreed to maintain the confidentiality thereof on terms and conditions at least as restrictive as those set forth herein and the Party providing Confidential Information to any such Person shall be responsible for the compliance with this Agreement by any such Person. If Confidential Information is the subject of a subpoena from a third party, the Receiving Party may disclose such Confidential Information on the advice of its counsel in compliance with the subpoena, provided that the Disclosing Party shall provide notice thereof to the providing Party and make reasonable efforts to afford the providing Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

(e) Notwithstanding anything to the contrary contained herein, Purchaser may disclose Confidential Information upon reasonable notice to Seller if Purchaser reasonably determines, based upon its status as a regulated public utility, that disclosure to a Governmental Authority is necessary or appropriate in connection with any submission or application to, or response from, any such authorities regarding the Project and this Agreement, the effect thereof on Purchaser's rates or investment return or similar matters; provided, that Purchaser shall (A) endeavor to keep Seller informed with respect to such disclosures, (B) file a written request in the form of a motion for protective order or for confidential treatment or other comparable written request that any Confidential Information be afforded confidential treatment and otherwise endeavor to obtain confidential treatment of Confidential Information, and (C) notify Seller

promptly if it receives notice of any challenge to the request that such Confidential Information be afforded confidential treatment.

(f) Neither Party shall issue any press or publicity release, other than information that is required to be distributed or disseminated pursuant to Applicable Law (provided that the Disclosing Party has given notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 11.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project, as are necessary in order to fulfill such Party's obligations under this Agreement.

(g) The obligations of the Parties under this Section 11.1 shall remain in full force and effect for two (2) years following the expiration or termination of this Agreement.

11.2 *Successors and Assigns; Assignment.*

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. With respect to any proposed assignment by Seller, Seller shall deliver or cause to be delivered to Purchaser evidence reasonably satisfactory to Purchaser of the technical and financial capability of the proposed assignee, it being understood that for any proposed assignee or transferee, technical capability may be demonstrated by a showing that the assignee or transferee or its Affiliates have a minimum of three (3) years' experience in the [wind] [solar] energy generation and operation business, including owning, controlling or operating for at least three (3) years a minimum of five hundred (500) MW_{AC} of [wind] [solar] energy generation capacity, or having a long-term contractual arrangement (not less than three (3) years in duration) with an operator for the Project meeting such requirements.

(b) If either Party wishes to assign, transfer, or otherwise convey its interest in this Agreement, it shall provide prior written notice of such proposed conveyance and information demonstrating the assignee or transferee meets the qualifications of Section 11.2(a) to the non-assigning Party, along with any other reasonably requested information. Within thirty (30) Days' receipt of notice of any proposed assignment, the non-assigning Party shall either consent or object to the proposed assignment, such consent not to be unreasonably withheld, provided that the assigning Party shall promptly provide any information on the proposed assignee or transferee requested by the non-assigning Party during such term.

(c) Notwithstanding the foregoing, no consent shall be required for any of the following assignments of this Agreement, but in the case of clause (iii) below any such assignment shall require prior written notice to the non-assigning Party:

(i) Any assignment of this Agreement by Seller to any debt Lenders as collateral security for obligations under the financing documents entered into with such Lenders; and

(ii) Any assignment or transfer of this Agreement to an Affiliate.

(d) In accordance with Section 11.2(c)(i), Seller shall be permitted to assign this Agreement to a debt Lender as collateral for any financing or refinancing of the Project. Purchaser will, at Seller's expense, execute customary consents to assignment of this Agreement in favor of any debt Lenders for collateral purposes as may be reasonably required by such Lenders, giving such Lenders "step-in" cure rights with respect to Events of Default, notices of such Events of Default, and such other rights as are customary in connection with the financing of projects similar to the Project. In addition, Purchaser will, at Seller's expense, execute customary estoppels in favor of Lenders providing tax equity financing. Notwithstanding the foregoing, (i) Purchaser will not be obligated to agree to any provisions that would adversely affect the rights or increase the duties of Purchaser under this Agreement in any material respect, including the extension of any cure periods or additional remedies for financing parties and (ii) Seller shall be responsible, at Purchaser's request, for Purchaser's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including attorneys' fees.

(e) Purchaser acknowledges that upon an event of default under any financing documents relating to the Project, any of the debt Lenders may (but shall not be obligated to) assume, or cause its designee or a new lessee or purchaser of the Project, to assume, all of the interests, rights and obligations of Seller thereafter arising under this Agreement; provided that such debt Lender, its designee or a new lessee or purchaser must comply with the qualifications requirements set forth in Section 11.2(a).

(f) Except in connection with Section 11.2(c)(i) above, in connection with any permitted assignment pursuant to this Section 11.2, among other things, (i) the assignee shall expressly assume all of the assignor's obligations under this Agreement (whether arising before or after such assignment) and (ii) the assignee shall agree in writing to be bound by the terms and conditions of this Agreement..

(g) Seller shall be required to assign this Agreement to any Person that becomes the direct owner of all or substantially all of the assets comprising the Project concurrently with the transfer of the applicable assets. For the sake of clarity, the foregoing shall not relieve Seller of the restrictions on assignment of this Agreement contained in this Section 11.2, and therefore if consent to the necessary assignment is required, any proposed transfer of all or substantially all of the assets comprising the Project shall require the consent of Purchaser to the same extent and subject to the same terms and conditions as for the required assignment of this Agreement.

(h) Any transfer by either Party not expressly permitted under this Section 11.2 shall be null and void *ab initio* and of no force or effect and further shall be deemed to be an Event of Default hereunder.

11.3 *Change of Control of Seller.* Seller must request Purchaser's consent to a Change of Control (which consent will not be unreasonably withheld) with at least thirty (30) days' prior written notice of such Change of Control ("Change of Control Request"). The cumulative number of Persons that are the subject of all Change of Control Requests that Seller submits to Purchaser within any thirty (30) day period will be no greater than three (3). Seller will only submit a Change of Control Request to Purchaser with respect to Persons (i) for whom Seller has received Purchaser's consent with respect to confidentiality in accordance with Section 11.1, and (ii) with whom Seller (or its upstream Affiliate, as applicable) has executed an exclusive agreement or term sheet governing such Change of Control.

(a) Purchaser will respond with written notice to each Change of Control Request no later than fifteen (15) Business Days after Purchaser's receipt of such Change of Control Request. Any consent to a Change of Control shall remain valid if within ninety (90) days after such consent is granted, Seller enters into a binding, definitive agreement intended to effect such Change of Control either upon entering such agreement or at a future date on the terms described in the Change of Control Request; provided, however, that nothing in this Section 11.3(a) will require Seller to provide Purchaser with a Change of Control Request prior to entering into a term sheet with any Person.

(b) If Purchaser consents to such Change of Control, Seller will notify Purchaser of the effective date of such Change of Control no later than five (5) days after such Change of Control.

(c) For the avoidance of doubt, Purchaser may withhold its consent on any reasonable basis, including Purchaser's determination that, following the Change of Control: (A) the Person(s) with the right and authority to direct, or cause the direction of, the management and policies of the Seller and/or the Project would lack the technical and/or financial capability necessary to assure that Seller is able to perform its obligations under this Agreement; (B) Purchaser and/or Purchaser's Affiliates would be exposed to financial risk that Purchaser finds unacceptable; and/or (C) would cause Purchaser and/or Purchaser's Affiliates to violate any law applicable to Purchaser and/or Purchaser's Affiliates, including anti-bribery laws.

11.4 *Financing Liens.*

(a) Seller, without approval of Purchaser, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project, and Seller's Interconnection Facilities.

(b) Within ten (10) Business Days of making such encumbrance, Seller shall notify Purchaser in writing of the name, address, and telephone and facsimile numbers of each Lender (or their collateral agent) to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed.

(c) After giving Purchaser such initial notice, Seller shall promptly give Purchaser notice of any change in the information provided in the initial notice or any revised notice.

11.5 Notices.

(a) All notices and communications required to be given pursuant to this Agreement shall be:

- (i) in writing;
- (ii) delivered by hand (against receipt), recorded courier or express service, or sent by electronic mail; provided, that any communications delivered by electronic mail shall be in a portable document format (PDF); and
- (iii) delivered, sent or transmitted to the address for the recipient's communications as stated below; provided, that if the recipient gives the other Party notice of another address, communications shall thereafter be delivered accordingly, and if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

(b) Any such notice and communication shall be deemed to have been received by a Party as follows:

- (i) if delivered by hand or delivered by courier or express service, at the time of delivery; or
- (ii) if sent by electronic mail properly addressed and dispatched, upon transmission, if during the recipient's regular business hours, and otherwise, on the next Business Day, provided that in either case such notice shall not be effective unless a copy of such notice shall be sent by registered or certified mail, return receipt requested, postage prepaid.

(c) The addresses for notices shall be as follows:

If to Seller:

with a copy to:

[_____]

If to Purchaser: Puget Sound Energy, Inc.
355 110th Avenue Northeast
Bellevue, WA 98004
Attn: General Counsel
Email: lorna.luebbe@pse.com

Amendments. This Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

11.6 *Records; Audit Rights.*

(a) Seller shall maintain complete and accurate records of and supporting documentation for all charges under this Agreement and all other data and/or information created, generated, collected, processed or stored by Seller in its performance under this Agreement (“Contract Records”). Unless Purchaser instructs Seller to delete or destroy any Contract Records or requests the return of such Contract Records to Purchaser, Seller shall retain Contract Records for a period of at least six (6) years after the date of the performance or after termination of this Agreement (the “Retention Period”).

(b) Seller shall provide to Purchaser and its representatives through the Retention Period, access at reasonable hours to Seller personnel and facilities and to Contract Records and other pertinent information, all to the extent relevant to Seller’s performance under this Agreement. Purchaser has the right to use general audit software and other reporting tools against the data files or databases dedicated to the services provided under this Agreement and (A) will be provided direct access to data (if databases are merged and segmented logically) or (B) will review extract program or code with code run under supervision of Purchaser’s auditor. Such access shall be provided for the purpose of performing audits and inspections to, among other things, (1) verify the accuracy and completeness of Contract Records, (2) verify the accuracy and completeness of charges under this Agreement, and (3) examine Seller’s compliance with its obligations under this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Late Payment Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

(c) Except as otherwise provided in this paragraph, each Party will be responsible for its own costs associated with any audit activity pursuant to this Section 11.7. If an audit reveals an overcharge of more than 10%, then Seller shall promptly reimburse Purchaser for the reasonable cost of the portion of such audit relating to the overcharge.

11.7 *Waivers.* Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

11.8 *Waiver of Certain Damages; Certain Acknowledgments.* NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT (EXCEPT TO THE EXTENT INDEMNIFICATION PAYMENTS ARE MADE PURSUANT TO SECTION 8.1 AS A RESULT OF AN INDEMNIFIED PERSON'S OBLIGATION TO PAY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES TO A THIRD PARTY (EXCLUDING EITHER PARTY'S AFFILIATES, LENDERS, OFFICERS, DIRECTORS, SHAREHOLDERS OR MEMBERS) AS A RESULT OF ACTIONS INCLUDED IN THE PROTECTION AFFORDED BY THE INDEMNIFICATION SET FORTH IN SECTION 8.1), NEITHER PURCHASER NOR SELLER (NOR ANY OF THEIR AFFILIATES, LENDERS, CONTRACTORS, CONSULTANTS, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR EMPLOYEES) SHALL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES UNDER, ARISING OUT OF, DUE TO, OR IN CONNECTION WITH ITS PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY OF ITS OBLIGATIONS HEREIN, WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, WARRANTY, INDEMNITY OR OTHERWISE. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED TO BE THE EXCLUSIVE REMEDY THEREFOR, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. THE PARTIES ALSO AGREE THAT IN ALL CASES WHERE THIS AGREEMENT PROVIDES FOR LIQUIDATED DAMAGES, THE ACTUAL DAMAGES WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OBTAINING AN ADEQUATE REMEDY WOULD BE UNREASONABLY TIME CONSUMING AND EXPENSIVE, AND THEREFORE SUCH LIQUIDATED DAMAGES ARE A REASONABLE APPROXIMATION OF THE HARM AND NOT A PENALTY, AND IN NO EVENT SHALL SUCH LIQUIDATED DAMAGES BE CONSIDERED SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

11.9 *Survival.* Notwithstanding any provisions herein to the contrary, the obligations set forth in Article 8 and Sections 9.2, 11.1 and 11.5 through 11.26, shall survive (in full force) the expiration or termination of this Agreement. All other provisions of this Agreement that must survive the expiration or earlier termination of this Agreement in order to give full force and effect to the intent of the Parties shall remain in effect and be enforceable following such expiration or termination to such extent.

11.10 *Severability.* If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect, and that provision shall be severed from the remainder of the Agreement, and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible, or otherwise modified in such fashion as to preserve, to the maximum extent possible, the original intent of the Parties, and the Agreement, as so modified, shall continue to be in full force and effect; provided that the Parties shall enter into negotiations concerning the terms affected by such

decision for the purpose of achieving conformity with requirements of any Applicable Law and the intent of the Parties.

11.11 *Standard of Review.* The Parties specifically intend and acknowledge and agree that, except as otherwise expressly provided in this Agreement neither Party shall be permitted to make a filing with the FERC under any provision of the Federal Power Act or the regulations promulgated thereunder that seeks to amend or otherwise modify, or requests the FERC to amend or otherwise modify, any provision of this Agreement at any time during the Term, except to implement an amendment or other modification to this Agreement that has been reduced to writing and signed by authorized representatives of both Parties pursuant to Section 11.6. In addition, to the extent any third party or the FERC acting *sua sponte*, seeks to amend or otherwise modify, or requests the FERC to amend or otherwise modify, any provision of this Agreement, the standard of review shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine).

11.12 *Governing Law.* This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington without regard its conflicts of laws provisions.

11.13 *Consent to Jurisdiction.*

(a) Each of the Parties hereto hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement shall be brought exclusively in any of the courts of the United States of America located in the United States District Court for the Western District of Washington, having subject matter jurisdiction, or if such court lacks subject matter jurisdiction, then the state district court for King County, Washington.

(b) By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby:

(i) Irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents;

(ii) Irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceedings brought in any such court has been brought in any inconvenient forum;

(iii) Agrees that service of process in any such action may be effected by mailing a copy thereof by certified mail, return receipt requested, postage prepaid, to such Party its address(es) set forth in Section 11.5, or at such other address of which the other Parties hereto shall have been notified; and

(iv) Agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

11.14 *Waiver of Trial by Jury.* EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

11.15 *Disputes.* In the event of any good faith dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a “Dispute”), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within thirty (30) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within thirty (30) days after such referral to the senior management of the Parties, then either Party may pursue all of its remedies available in law or equity. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner, provided, however, that failure to resolve a Dispute shall not, standing alone, constitute a breach of this Agreement. Notwithstanding the existence of a Dispute, each Party shall fulfill its obligations in accordance with the terms hereof.

11.16 *Specific Performance.* The Parties agree that no adequate remedy at law exists for a breach or threatened breach of any of the provisions of this Agreement, the continuation of which unremedied will cause the aggrieved Party to suffer irreparable harm. Accordingly, the Parties agree that the Parties shall be entitled, in addition to other remedies that may be available to them, to immediate injunctive relief from any breach or threatened breach of any of the provisions of this Agreement and to specific performance of their rights hereunder, as well as to any other remedies available at law or in equity. This right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, the Parties would not have entered into this Agreement. The Parties agree that they will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the opposing Party has an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or in equity. The Parties shall not be required to provide any bond or other security in connection with any such order or injunction. The Parties also agree that (i) the seeking of any remedies pursuant to this Section 11.17 shall not in any way constitute a waiver of any right to seek any other form of relief that may be available under this Agreement.

11.17 *No Third-Party Beneficiaries.* Except as set forth in Article 8 and in Sections 11.2, 11.3 and 11.9, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

11.18 *No Agency.* This Agreement is not intended, and shall not 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. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

11.19 *Further Assurances.* Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 11.20.

11.20 *Good Faith.* The Parties shall act in accordance with principles of good faith and fair dealing in the performance of this Agreement.

11.21 *Forward Contract.* Each Party acknowledges and agrees that: (i) the transactions contemplated under this Agreement constitute “forward contracts” within the meaning of Title 11 of the United States Code (the “Bankruptcy Code”); (ii) Purchaser is a “forward contract merchant” within the meaning of the Bankruptcy Code; and (iii) Purchaser’s rights under Section 9.2 of this Agreement constitute “contractual rights to liquidate” the transactions within the meaning of the Bankruptcy Code. Each Party acknowledges and agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in Section 366 of the Bankruptcy Code, and each Party agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding involving a Party. In any such proceeding, each Party further agrees to waive the right to assert that the other Party is a provider of last resort.

11.22 *Separation of Functions.* Seller hereby acknowledges that (i) Purchaser is acting solely in its capacity as a local distribution company, (ii) the activities of Purchaser as Transmission Provider are outside the scope of this Agreement, and (iii) Purchaser shall not have any liabilities or obligations hereunder arising out of any actions or inactions of Purchaser acting in its role as Transmission Provider.

11.23 *Captions; Construction.* All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

11.24 *Entire Agreement.* This Agreement supersedes all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

11.25 *Counterparts; Electronic Delivery.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including

.pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other similar transmission method, and any counterpart so delivered shall be deemed to have been duly and validly executed and delivered and be valid and effective for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.

PUGET SOUND ENERGY, INC.

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

ANNEX I

“Affiliate” shall mean, with respect to any Person, (i) each Person that directly or indirectly, Controls such designated Person; (ii) any Person that beneficially owns or holds fifty percent (50%) or more of any class of voting securities of such designated Person or fifty percent (50%) or more of the equity interest in such designated Person; or (iii) any Person of which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interest.

“After-Tax Basis” shall mean, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the “Base Payment”) supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment 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 Payment (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 Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to 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 taxation at the highest applicable statutory rates applicable to corporations doing business in Washington, if applicable and shall take into account the deductibility (for Federal income tax purposes) of state and local income taxes.

“Agreement” shall have the meaning set forth in the first paragraph hereof.

“Ancillary Services” shall mean those services which can be provided to or by the Project in addition to capacity and Energy, and which are described as “ancillary services” under any applicable OATT.

“Applicable Law” shall mean, with respect to any Person or the Project, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, tariffs, regulations, Governmental Approvals, licenses and permits, directives and requirements of all regulatory and other Governmental Authorities as may be amended, in each case applicable to or binding upon such Person or the Project (as the case may be), including the standards and criteria of the North American Electric Reliability Corporation, FERC, the Western Power Pool, and WECC.

“Attestation Form” shall have the meaning set forth in Section 2.3(e).

“Attributes” shall mean any and all Capacity Attributes and Generation Attributes, provided that Attributes shall not include any Incentives.

“Balancing Authority” shall have the meaning set forth in the NERC Glossary of Terms and shall be designated by Purchaser from time to time in its sole discretion. The Balancing Authority in which the Project will participate initially will be Puget Sound Energy, Inc.

“Balancing Charges” shall have the meaning set forth in Section 2.9(a)(i).

“Bankruptcy Code” shall have the meaning set forth in Section 11.22.

“Business Day” shall mean every day other than a Saturday or Sunday or any other day on which banks in the State of Washington are permitted or required to remain closed.

“CAISO” shall mean the California Independent System Operator.

“Capacity Attributes” shall mean any and all present or future (known or unknown) defined characteristics, certificates, tags, credits, or Ancillary Service attributes, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or Ancillary Services, including those in respect of the WRAP Program.

“CCA” means the state of Washington’s Climate Commitment Act.

“CEIP” shall have the meaning set forth in Section 7.5(b).

“Change of Control” shall mean, with respect to Seller: (a) the consolidation with or merger into any other Person by such Person or by any other Person, or (b) a direct or indirect assignment, conveyance, transfer, lease, exchange, conversion or other disposition of the equity interests in such Person or the voting rights with respect thereto, as a result of which the Ultimate Parent shall cease to, directly or indirectly, Control such Person; provided, however, that (i) any direct or indirect sale or issuance of equity interests in Seller to a Lender pursuant to a tax equity financing transaction and (ii) any Change of Control with respect to Seller’s Ultimate Parent, shall in each case not constitute a “Change of Control”.

“Claim Notice” shall have the meaning set forth in Section 8.1(d).

“Code” shall mean the Internal Revenue Code of 1986, as amended or any successor thereto.

“Commercial Operation Date” shall mean, with respect to the Project, that: (i) not less than [] percent ([]%) of the Planned Nameplate Capacity of the Project is ready for continuous generation and delivery of Energy and Attributes to the Delivery Point for sale to Purchaser pursuant to the terms of this Agreement; (ii) the Project has been fully tested and commissioned and all related facilities and rights have been completed or obtained to allow for normal and continuous operation of the Project at the Final Nameplate Capacity; (iii) Seller shall have satisfied the requirements set forth in the Commercial Operation certificate in the form attached as Exhibit F with respect to the Project; (iv) Seller shall have delivered the true, correct, and complete Commercial Operation certificate from Seller and the Independent Engineer; and (v) Seller shall have received all local, state, and federal Governmental Approvals and other approvals as may be required by Applicable Law for the construction, operation, and maintenance of the Project.

“Confidential Information” shall have the meaning set forth in Section 11.1.

“Construction Start Date” shall mean the date on which Seller has issued a full notice to proceed to the Contractor directing Contractor to commence all or substantially all of the work comprising the Project without condition or delay.

“Contract Rate” shall mean the applicable rates set forth in Exhibit B for the Contract Year in which the Delivered Energy is delivered, as may be adjusted in accordance with Exhibit B.

“Contract Records” shall have the meaning set forth in Section 11.7.

“Contract Year” shall mean each year during the Term, whether such year is comprised of 365 or 366 Days, commencing at 00:00 Pacific Prevailing Time on the Commercial Operation Date and ending at 24:00 Pacific Prevailing Time on the day before the first anniversary of the Commercial Operation Date, and each anniversary thereof, or, in the case of the last Contract Year, the expiration of the Initial Term or Renewal Term, as applicable.

“Contractor” shall mean the engineering, procurement and construction contractor selected by Seller to design, build, and construct the Project.

“Control” of a Person, including the terms “controls,” “is controlled by,” and “under common control with,” means the possession, directly or indirectly through one or more intermediaries, of (a) a voting interest of more than fifty percent (50%) in such Person, or (b) the power to either (i) elect a majority of the directors (or Persons with equivalent management power) of such Person, or (ii) direct or cause the direction of the management or policies of such Person, whether through the ownership of securities or partnership, membership or other ownership interests, by contract, by operation of law or otherwise.

“Credit Support” shall mean a Letter of Credit; provided that, after the Commercial Operation Date, Seller shall be permitted to utilize a Parent Guaranty.

“Creditworthy Bank” shall mean a U.S. state or federally chartered commercial bank (or U.S. branch of a foreign commercial bank) which has (i) assets of at least \$10,000,000,000 and (ii) senior unsecured long-term debt or deposits that, at the time when the letter of credit is delivered, are rated at least “A-” (or its current equivalent) by S&P and at least “A3” (or its then current equivalent) by Moody’s.

“CRS” shall mean the Center for Resource Solutions.

“Customer Benefits Plan” shall mean [_____].

“Day” or “day” shall mean a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 24:00 hours Pacific Prevailing Time on the same calendar day.

“Deemed Delivered Energy” shall mean, during any hour in which a Purchaser Voluntary Curtailment shall be in effect, an amount of Energy (based on actual [wind]/[solar irradiation] and availability data during such Purchaser Voluntary Curtailment) equal to the difference between the amount of Delivered Energy in such hour and the aggregate amount of Energy that would have been Delivered Energy in such hour, but for such Purchaser Voluntary Curtailment.

“Defaulting Party” shall have the meaning set forth in Section 9.2.

“Delivered Energy” shall mean all Energy delivered to Purchaser by Seller at the Delivery Point in accordance with this Agreement, and in all cases shall include any Test Energy delivered to the Delivery Point.

“Delivery Point” shall mean [_____].

“Disclosing Party” shall have the meaning set forth in Section 11.1(a).

“Dispute” shall have the meaning set forth in Section 11.16.

“Early Termination Date” shall have the meaning set forth in Section 9.2(a)(i).

“Effective Date” shall have the meaning set forth on the first page of this Agreement.

“Energy” shall mean electric energy in the form of three (3) phase, sixty (60) Hertz, alternating current.

“Energy Imbalance Market” shall mean the CAISO’s Western Energy Imbalance Market.

“EPC” shall have the meaning set forth in Section 7.4.

“Event of Default” shall have the meaning set forth in Section 9.1.

“Exclusivity Period” shall have the meaning set forth in Section 3.4.

“Excused Delay” shall have the meaning set forth in Section 4.4(a).

“Federal Power Act” shall mean the Federal Power Act of 1935, 16 U.S.C. § 791a, et seq.

“FERC” shall mean the Federal Energy Regulatory Commission or any successor government agency.

“First Offer” shall have the meaning set forth in Section 4.5(e).

“Final Nameplate Capacity” shall mean the actual nameplate capacity of the [Turbines/Panel] for the Project on the Commercial Operation Date or, subject to Section 4.4(f), the date that is one hundred eighty (180) days after the Commercial Operation Date.

“Force Majeure” shall have the meaning set forth in Section 10.2.

“Forced Outage” shall mean the shutdown or unavailability of the Project, or a portion thereof, other than as a Planned Outage, Purchaser Voluntary Curtailment or System Curtailment. A Forced Outage shall not include an outage that may be deferred to a Planned Outage consistent with Prudent Operating Practices and without causing or the reasonable likelihood of causing safety risk, damage to equipment or additional costs.

“Generation Attributes” shall mean any and all present or future (known or unknown) attributes associated with the capability of the Project to produce Energy or Ancillary Services or the generation of Energy by the Project, including but not limited to current or future credits, credit privileges, emissions reductions, offsets, allowances, registrations, recordations, memorializations, and other benefits, rights, powers or privileges, however denominated, including as such may be provided for in any currently existing or subsequently enacted Applicable Law attributable to the Project or the Energy that Purchaser purchases from Seller hereunder, other than Capacity Attributes. Examples of Generation Attributes include, but are not limited to: RECs, the avoidance of the emission of any gas, chemical, pollutant, or other substance into the air, soil or water, or the reduction, displacement or offset of emissions resulting from fuel combustion at another location pursuant to any federal, state or local legislation or regulation addressing “greenhouse gases” or similar emissions, set-aside allowances and/or allocations from emissions trading programs, environmental or renewable energy credit trading program or any similar program now existing or hereafter developed under federal, state, local or foreign legislation or regulation or by any independent certification board or group generally recognized in the electric power industry. Generation Attributes include all rights to report ownership of any of the foregoing to any entity, organization, governmental body, or otherwise at Purchaser’s sole discretion.

“Governmental Approvals” shall have the meaning set forth in Section 4.2.

“Governmental Authority” shall mean any federal, state, local or municipal government, governmental department, city council, public power authority, public utility district, joint action agency, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question, including the North American Electric Reliability Corporation and FERC.

“Green-e® Standard” shall mean the Green-e® Renewable Energy Standard for Canada and the United States Version 4.1 as published by CRS and any amended versions.

“Guaranteed Commercial Operation Date” shall have the meaning set forth in Exhibit G hereto, as such date may be extended pursuant to Section 4.4(e).

“Guaranteed Construction Start Date” shall mean [____], 20[____], as may be extended in accordance with the Terms of this Agreement.

“Incentives” shall mean (i) any and all present or future (whether known or unknown) state and federal production tax credits (including any Production Tax Credits), investment tax credits (including any Investment Tax Credits) and any other tax credits which are or will be generated by the Project, and (ii) present or future (whether known or unknown) cash payments provided or made available by non-governmental entities to the Project or otherwise to renewable energy generators, or outright grants of money relating in any way to the Project.

“Indemnified Party” shall have the meaning set forth in Section 8.1(d).

“Indemnifying Party” shall have the meaning set forth in Section 8.1(d).

“Independent Engineer” means a licensed and registered professional engineering consulting firm selected by Seller from one or more of the following (or any other such firm selected by Seller subject to approval in advance by Purchaser (not to be unreasonably withheld)): [____].

“Independent Valuator” shall mean, as mutually agreed by the Parties, any independent internationally recognized investment bank, accounting firm or other recognized professional services firm that is regularly engaged in providing valuations of power projects comparable to the Project.

“Initial Term” shall have the meaning set forth in Section 3.2.

“Interconnection Agreement” shall mean (i) [____] with respect to the Project, or (ii) such other interconnection agreement with respect to the Project as the Parties may agree to after the date hereof.

“Interconnection Agreement Counterparty” shall mean any counterparty to the Interconnection Agreement, other than Seller.

“Investment Grade Credit Rating” shall mean a long-term credit rating (corporate, issuer or long-term senior unsecured debt), unsupported by third-party credit support, of “Baa3” or higher by Moody’s or “BBB-” or higher by S&P, or if such Person has a credit at such time from both Standard & Poor’s and Moody’s, “BBB-” or better from Standard & Poor’s and “Baa3” or better from Moody’s.

“Investment Tax Credits” shall mean the tax credits applicable to certain property described in Section 48 of the Code, as the same may be amended from time to time, and any successor provision or technology-neutral clean electricity investment tax credits for which the Project or any portion thereof qualifies under any section of the Code.

“Inverter” shall mean [____].

“Late Payment Rate” shall have the meaning set forth in Section 2.5(d).

“Lender” or “Lenders” shall mean any and all Persons or successors in interest thereof lending money, extending credit, or providing tax equity to Seller to finance the development, construction, ownership and/or operation of the Project, including any refinancing(s) of such indebtedness.

“Letter of Credit” shall mean a letter of credit in the form of Exhibit E hereto from a Creditworthy Bank and otherwise satisfying the requirements of Section 5.4.

“Major Equipment” shall mean [____].

“Major Equipment Commitment Date” shall mean [____].

“Major Equipment Procurement Date” shall mean [____].

“Market Value” shall mean, (a) where the Defaulting Party is Purchaser, the excess, if any, of (i) the present value as of the Early Termination Date of payments that would have been made under this Agreement for the period from the Early Termination Date to the scheduled expiration of the Term, less (ii) the present value as of the Early Termination Date of payments that are to be made under a Replacement Contract (whether or not actually entered into by Seller) during its term and (b) where the Defaulting Party is Seller, the excess, if any, of (i) the present value as of the Early Termination Date of payments that are to be made under a Replacement Contract (whether or not actually entered into by Purchaser) during its term, less (ii) the present value as of the Early Termination Date of payments that would have been made under this Agreement for the period from the Early Termination Date to the then scheduled expiration of the Term.

“Meter” shall mean a settlement quality, utility grade instrument and associated equipment meeting applicable electric industry standards as established by CAISO for SQMD, National Electrical Manufacturers Association and American National Standards Institute and used to measure and record the quantity and the required delivery characteristics of Energy delivered hereunder. Metering equipment must meet requirements for the most recent version of the CAISO Business Practice Manual for Metering as it relates to the creation of SQMD.

“Metering Point” shall mean the location or locations of the Meters at the Delivery Point.

“Mid-Columbia Flat Price” shall have the meaning set forth in Exhibit G.

“Milestones” shall have the meaning set forth in Section 4.4.

“Moody’s” shall mean Moody’s Investor Service, Inc. rating group, or its successor.

“MW” shall mean a megawatt of capacity.

“MWh” shall mean a megawatt-hour of Energy (rounded to the third decimal point).

“Non-Defaulting Party” shall have the meaning set forth in Section 9.2.

“OATT” shall mean a Transmission Provider’s FERC-approved open access transmission tariff (or in the case of BPA, its equivalent tariff).

“Operating Procedures” shall have the meaning set forth in Section 2.11(b).

“Option” shall have the meaning set forth in Section 3.5(a).

“Pacific Prevailing Time” or “PPT” shall mean the prevailing time in the eighth time zone west of Greenwich Mean Time.

“Panels” shall mean [_____].

“Parent Guaranty” means a guaranty in the form of Exhibit D hereto from an Affiliate with an Investment Grade Credit Rating as Credit Support.

“Parties” shall have the meaning set forth in the first paragraph of this Agreement.

“Party” shall have the meaning set forth in the first paragraph of this Agreement.

“Person” shall mean an individual, partnership, corporation, business trust, joint-stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company or any other entity of whatever nature.

“Planned Nameplate Capacity” shall mean [____] MWs of [Turbine/Panel] nameplate capacity.

“Planned Outage” shall mean the removal of equipment from service availability for inspection, maintenance and/or general overhaul of one or more pieces of equipment or equipment groups that affects the available power production and/or delivery capability of the Project.

“Pre-COD Termination Payment” shall have the meaning set forth in Section 4.5(b).

“Pre-Commercial Operation Date Credit Support” shall have the meaning set forth in Section 5.1(a).

“Prevailing Wage and Apprenticeship Requirements” means the requirements under Code Sections 45(b)(7) and (8), Code Sections 45Y(g)(9) and (10), Code Sections 48(a)(10) and (11), and Code Sections 48E(d)(3) and (4) and any PWA Guidance.

“Prime Rate” shall mean the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided further that if such rate of

interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason, the “Prime Rate” shall mean a successor rate of interest per annum mutually agreed to as between Purchaser and Seller.

“Production Tax Credits” shall mean the tax credits applicable to electricity produced from certain renewable resources pursuant to Section 45 of the Code, as the same may be amended from time to time, and any successor provision or technology-neutral clean electricity production tax credits for which the Project or any portion thereof qualifies under any section of the Code, in each case, inclusive of any bonus credits, increased amounts or adders thereunder.

“Project” shall mean the approximately [] MW_{AC} electrical plant and equipment used to generate electricity utilizing renewable [] power to be located at the Site, including [Modules/Turbines], necessary ancillary electrical, metering, SCADA and control equipment, Seller’s Interconnection Facilities and any and all additions, replacements or modifications hereto, to be constructed in the configuration as more particularly described in Exhibit A hereto. The final design and specifications of the Project will be chosen from the configurations set forth in Exhibit A hereto pursuant to the terms of Section 4.3(a) hereof.

“Project Assets” shall have the meaning set forth in Section 3.5(a).

“Prudent Operating Practices” shall mean the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for wind facilities in the U.S. of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and reasonable standards of economy and expedition.

“Purchaser” shall have the meaning set forth in the first paragraph of this Agreement.

“Purchaser Voluntary Curtailment” shall mean the period of time during which a Purchaser Voluntary Curtailment Order is in effect. For avoidance of doubt, any generation curtailment due to or arising out of economic dispatch, scheduling, bidding, or other market or economic activities shall be deemed to have occurred due to a Purchaser Voluntary Curtailment Order.

“Purchaser Voluntary Curtailment Order” shall mean an instruction from Purchaser to Seller to reduce generation from the Project by an amount and for a period of time as set forth in such instruction, for reasons unrelated to a System Curtailment Order, a Force Majeure event or an outage on the Transmission System. For the sake of clarity, curtailment orders issued by Purchaser’s transmission function in its capacity as a Transmission Provider or any other Transmission Provider are System Curtailment Orders and not Purchaser Voluntary Curtailment Orders.

“Purchaser Voluntary Curtailment Period” shall mean, with respect to a given Purchaser Voluntary Curtailment, the period during which such Purchaser Voluntary Curtailment prevents the delivery of Energy.

“Purchaser’s Check Meters” shall have the meaning set forth in Section 6.1(c).

“Receiving Party” shall have the meaning set forth in Section 11.1(a).

“RECs” shall mean any and all present or future (known or unknown) renewable energy credits, offsets or other benefits allocated, assigned or otherwise awarded or certified to Seller or Purchaser by any Governmental Authority, program administrator or other certification board or other Person generally recognized in the renewable energy industry in connection with the Project, including “renewable energy credits” and/or “alternative energy credits” as defined under certain state statutes and all rights to report ownership of such in compliance with federal, state or local laws and regulations, including any reporting rights accruing under §1605(b) of the Energy Policy Act of 1992 and any present or future federal, state or local law or regulation, or international or foreign emissions trading programs.

“Remedial Action Plan” shall have the meaning set forth in Section 4.4(a)(ii).

“Renewal Term” shall have the meaning set forth in Section 3.3.

“Replacement Contract” shall mean a contract for the purchase and sale of energy produced from a [wind] [solar] energy facility that (i) is entered into with a counterparty that has the same or similar creditworthiness as the Defaulting Party hereunder as of the Effective Date (or a counterparty whose obligations under the Replacement Contract are guaranteed by an entity with such creditworthiness), (ii) has a term substantially the same as the remaining unexpired portion of the Term, (iii) provides for the Attributes associated with the production of the energy to be transferred to the energy purchaser under such contract, and (iv) has an output delivery point that is the same as or substantially similar to the Delivery Point hereunder, it being understood that commercially reasonable adjustments to the price under such contract shall be made to take into account, among other possible commercially material differences, differences due to length of term, capacity factors, Attributes and the location of the delivery point under the Replacement Contract compared to the Delivery Point hereunder.

“Replacement Renewable Energy Credits” shall mean credits that are tradable in WREGIS, which may include renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, or Green-e® products.

“Reputational Event” shall have the meaning set forth in Section 7.3(b).

“Retention Period” shall have the meaning set forth in Section 11.7(a).

“S&P” shall mean Standard & Poor’s rating group (a division of McGraw-Hill, Inc.), or its successor.

“Seller” shall have the meaning set forth in the first paragraph of this Agreement.

“Seller Credit Event” shall be deemed to have occurred if at any time Seller fails to satisfy its credit support obligations of Section 5.1 hereunder, which may include (i) a failure by Seller or, if applicable, its guarantor, to maintain an Investment Grade Credit Rating, or (ii) if a bank issuing a Letter of Credit hereunder ceases to be a “Creditworthy Bank.” For purposes of this definition, a Seller Credit Event shall not be deemed to have occurred with respect to a Letter of Credit if Purchaser has drawn the full amount of such Letter of Credit pursuant to the draw conditions set forth in Section 5.4.

“Seller’s Check Meters” shall have the meaning set forth in Section 6.1(a)(iv).

“Seller’s Designated Check Meter” shall mean Seller’s Check Meter, as adjusted to reflect the Energy delivered to the Metering Point, designated from time to time by Seller to act as a backup Meter pursuant to Section 6.2.

“Seller’s Estimated Forecast” shall have the meaning set forth in Section 2.9(b)(v).

“Seller’s Interconnection Facilities” shall mean the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Transmission Provider’s Transmission System up to, and on Seller’s side of, the Metering Point.

“Seller’s Primary Meter” shall mean the Meter installed to reflect the Energy delivered to the Metering Point.

“Seller’s Senior Management” shall mean Seller’s senior manager responsible for day-to-day oversight of the development and construction of the Project.

“Site” shall mean the real property located in [_____] County, [_____] on which the Project is located, as further described in Exhibit A.

“SQMD” shall mean Settlement Quality Meter Data.

“Surplus Delivered Amount” shall have the meaning set forth in Section 2.2(a).

“Surplus Metered Amount” shall have the meaning set forth in Section 2.2(a).

“System Curtailment” shall mean the period of time during which a System Curtailment Order is in effect or the Transmission System is not available due to an outage or a System Emergency.

“System Curtailment Order” shall mean an instruction from a Transmission Provider or any other entity having authority, now or in the future, over the transmission system (e.g., a reliability coordinator, Balancing Authority, independent system operator, distribution operator, etc.) to reduce generation from the Project.

“System Emergency” shall mean an “Emergency Condition” (as defined in a Transmission Provider’s OATT).

“Target Construction Start Date” shall have the meaning set forth in Exhibit G hereto, as such date may be extended pursuant to Section 4.4(d).

“Target Major Equipment Procurement Date” shall mean [____].

“Term” shall have the meaning set forth in Section 3.1.

“Termination Payment” shall have the meaning set forth in Section 9.3(a).

“Test Energy” shall mean all energy produced by the [____] actually installed and commissioned as part of the Project and delivered by Seller to the Delivery Point in accordance with Section 2.1(b).

“Test Energy Notice” shall have the meaning set forth in Section 2.1(b).

“Transmission Charges” shall have the meaning set forth in Section 2.8(b).

“Transmission Provider” shall mean an entity (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity under this Agreement anywhere from source to sink, and provides service under a tariff (including, in the event of a pseudo-tie of the Project into Purchaser’s transmission system, or similar arrangement, Purchaser), or a regulatory body that regulates such entity. For the avoidance of doubt, “Transmission Provider” includes [____].

“Transmission Provider’s Transmission System” shall mean the transmission facilities for the transmission of Energy from and after the Delivery Point.

“Transmission System” means transmission facilities for the transmission of Energy.

[“Turbine” shall mean a single wind Turbine generating system, including the tower, pad, transformer and controller system, installed as part of the Project].

“Ultimate Parent” shall mean, with respect to Seller, [____].

“Washington State and Local Sales and Use Taxes” shall mean Washington state and local retail sales and use taxes (including Washington State Retail Sales Taxes) imposed pursuant to RCW 82.08, RCW 82.12 or RCW 82.14, if any, and other substantially similar sales and use taxes

imposed under Washington state or local law (including, by reason of a change in Applicable Law) which, for purposes of clarity, the Parties specifically agree shall not include any business and occupation taxes.

“WECC” shall mean the Western Electricity Coordinating Council.

“WRAP Program” shall mean the Western Resource Adequacy Program administered by the Western Power Pool.

“WREGIS” shall mean the Western Renewable Energy Generation Information System or its successor system(s).

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

EXHIBIT A

PROJECT CONFIGURATION

Seller is building and will own and operate a Project with a nameplate capacity rating of approximately [] MW. The Project is located in [] County, []. The Project will generate electrical power that will be sold wholesale. The Project will include the following major components:

Type of Generating Facility: []

Model: []

Number of Units: []

Nameplate Capacity: [] MW AC

Nameplate Capacity Rating at Point of Delivery: [] MW AC

EXHIBIT B

CONTRACT RATE

1. Contract Rate. The Contract Rate shall be \$[_____] per MWh, subject to adjustment as specifically provided below.
2. Production Tax Credit. If the Production Tax Credit is claimed with respect to the Project, the following provisions shall apply:
 - a. If for any Contract Year the Project is eligible for the Domestic Content Adder or the Energy Community Adder, the Contract Rate for such Contract Year shall be subject to adjustment as follows:
 - i. If the Project is eligible for either the Domestic Content Adder or the Energy Community Adder, but not both, then the Contract Rate shall be \$[_____] per MWh for such Contract Year.
 - ii. If the Project is eligible for both the Domestic Content Adder and the Energy Community Adder, then the Contract Rate shall be \$[_____] per MWh for such Contract year.
 - b. If the Contract Rate for a Contract Year is subject to adjustment as described above, such adjustment shall take effect for the first month following the Tax Benefit Eligibility Date for such Contract Year, but shall be applied retroactively, and Seller shall recalculate all invoices previously issued for such Contract Year utilizing the adjusted Contract Rate, and on the next invoice issued to Purchaser, Seller shall credit Purchaser the difference between the aggregate amount previously invoiced and the amount that would have been invoiced for such Contract Year applying such adjusted Contract Rate.
3. Investment Tax Credit. If the Investment Tax Credit is claimed with respect to the Project, the following provisions shall apply:
 - a. If the Project is eligible for the Domestic Content Adder or the Energy Community Adder, the Contract Rate shall be subject to adjustment as follows:
 - i. If the Project is eligible for either the Domestic Content Adder or the Energy Community Adder, but not both, then the Contract Rate shall be \$[_____] per MWh.
 - ii. If the Project is eligible for both the Domestic Content Adder and the Energy Community Adder, then the Contract Rate shall be \$[_____] per MWh.
 - b. If the Contract Rate is subject to adjustment as described above, such adjustment shall take effect for the first month following the Tax Benefit Eligibility Date, but shall be

applied retroactively, and Seller shall recalculate all invoices previously issued utilizing the adjusted Contract Rate, and on the next invoice issued to Purchaser, Seller shall credit Purchaser the difference between the aggregate amount previously invoiced and the amount that would have been invoiced applying such adjusted Contract Rate.

4. Defined Terms.

- a. The capitalized terms in this Exhibit shall have the meanings set forth in the Agreement, including in the definitions attached and incorporated hereto as Annex I to the Agreement, whether singular or plural or in the present or past tense.
- b. For purposes of this Exhibit B, the following defined terms shall have the meanings set forth below:
 - i. “Domestic Content Adder” means the domestic content bonus credit described in Code Sections 45(b)(9), 45Y(g)(11), 48(a)(12), or 48E(a)(3)(B), as applicable, or any analogous Code section.
 - ii. “Energy Community Adder” means the energy community bonus credit described in Code Sections 45(b)(11), 45Y(g)(7), 48(a)(14), or 48E(a)(3)(D), as applicable, or any analogous Code section.
 - iii. “Tax Benefit Eligibility Date” means the earliest to occur of (i) the date on which Seller or any investor in the Project, or any Affiliate thereof, files any federal tax return claiming eligibility for the Domestic Content Adder and/or the Energy Community Adder, as applicable, for the Project, (ii) the filing deadline (including extensions) for the tax return described in clause (i) hereof, or (iii) the date on which Seller or any investor in the Project, or any Affiliate thereof, sells, transfers or otherwise monetizes with a third party the Incentives for the Project in such a way that realizes value for the Domestic Content Adder and/or the Energy Community Adder.

EXHIBIT C

RENEWABLE ATTESTATION FORM

A. Reference is made to that certain Power Purchase Agreement (the “Agreement”) by and between [____], a Delaware limited liability company (“Seller”), and Puget Sound Energy, Inc., a Washington corporation (“Purchaser”), dated [____], 20[____]. Unless otherwise defined herein, all defined terms shall have the meanings assigned to them in the Agreement.

B. I, [*Name*], [*Title*], as the authorized representative of Seller hereby declare under penalty of perjury, to the best of my knowledge, that:

1. Seller has sold, transferred and delivered to Purchaser, the Attributes associated with the Delivered Energy produced by that certain [wind] [solar] generation facility with the aggregate nameplate capacity of approximately [____] MW_{AC} located at [____] in [____] County, [____] (“Project”); and

2. The Attributes scheduled on the table below:

- i. were generated by the Project;
- ii. are solely and exclusively owned by Purchaser;
- iii. were sold only once by Seller exclusively to Purchaser;
- iv. have not been used by Seller or any third party, including to meet any other program requirements in this state, another state or jurisdiction including any federal, state, or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or renewable energy mandate;
- v. were not sold separately to any end-use customer or other wholesale provider other than Purchaser; and
- vi. were not used on-site to power any electrical generation equipment or for other on-site uses.

Generator Name	Generator ID Number	Fuel Type (If biomass, lists fuel)	#MWs RECs/ Power Sold	1 st Date of Generator Operation (mm/yy)	NOx Emissions (Lbs/MWh)	Co ₂ Emissions (Lbs/MWh)	Co ₂ Emissions (Lbs/MWh)	Period of Generation (Q#/year)

C. This attestation may be disclosed by Seller and Purchaser to others, including any certification authority and the Washington Utilities and Transportation Commission and the Federal Energy Regulatory Commission, to substantiate and verify the accuracy of the Parties' compliance, advertising and public claims.

D. As an authorized representative of Seller, I state that the above statements are true and correct to the best of my knowledge. ***This attestation may serve as a bill of sale to confirm, in accordance with the Agreement, the transfer from Seller to Purchaser all of Seller's right, title and interest in and to the Attributes as set forth above.***

As an authorized agent of [____], I attest that the above statements are true and correct.

[____]

Name: _____

Title: _____

Place of Execution: _____

EXHIBIT D

FORM OF SELLER'S GUARANTY

THIS GUARANTY, dated as of [_____] 20[___], is issued by [_____] a [_____] (“Guarantor”) in favor of Puget Sound Energy, Inc., a Washington corporation (“Guaranteed Party”). [_____] a [_____] (“Obligor”) is an indirect subsidiary of Guarantor.

RECITALS

A. Obligor and Guaranteed Party have entered into a Power Purchase Agreement dated as of [_____] 20[___] (the “Agreement”).

B. This Guaranty is delivered to Guaranteed Party by Guarantor pursuant to the Agreement.

AGREEMENT

1. Guaranty of Obligations Under the Agreement.

(a) For value received, Guarantor hereby absolutely, unconditionally and irrevocably, subject to the express terms hereof, guarantees the full payment when due of all payment obligations, whether now in existence or hereafter arising, by Obligor to Guaranteed Party pursuant to the Agreement (the “Obligations”). This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all such Obligations may be or become discharged or uncollectible in any bankruptcy, insolvency or other similar proceeding, or otherwise unenforceable.

(b) **Maximum Guaranteed Amount.** Notwithstanding anything to the contrary herein, Guarantor’s aggregate obligation to Guaranteed Party hereunder is limited to [_____] U.S. Dollars (\$[_____] (the “Maximum Guaranteed Amount”) except that the foregoing limitation shall not apply to the extent of any liability resulting from the fraud of the Obligor (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to the Guaranteed Party, pursuant to a demand made upon Guarantor by Guaranteed Party or otherwise made by Guarantor pursuant to its obligations under this Guaranty including any indemnification obligations, shall reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis) and shall not either individually or in the aggregate be greater or different in character or extent than the obligations of Obligor to Guaranteed Party under the terms of the Agreement. IN NO EVENT SHALL GUARANTOR BE SUBJECT TO ANY CONSEQUENTIAL, EXEMPLARY, EQUITABLE, LOSS OF PROFITS, PUNITIVE, TORT OR OTHER SIMILAR DAMAGES UNLESS OBLIGOR IS OBLIGATED THEREFORE PURSUANT TO THE AGREEMENT.

2. **Payment; Currency.** All sums payable by Guarantor hereunder shall be made in freely transferable and immediately available funds and shall be made in the currency in which the Obligations were due. If Obligor fails to pay any Obligation when due, the Guarantor will pay that

Obligation directly to Guaranteed Party within twenty (20) days after written notice to Guarantor by Guaranteed Party. The written notice shall provide a reasonable description of the amount of the Obligation and explanation of why such amount is due.

3. Waiver of Defenses. Except as set forth above, Guarantor hereby waives notice of acceptance of this Guaranty and of the Obligations and any action taken with regard thereto, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of the Obligations, suit, or the taking of and failing to take other action by Guaranteed Party against Obligor, Guarantor or others and waives any defense of a surety. Without limitation, Guaranteed Party may at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (a) make any change to the terms of the Obligations; (b) take or fail to take any action of any kind in respect of any security for the Obligations; (c) exercise or refrain from exercising any rights against Obligor or others in respect of the Obligations or (d) compromise or subordinate the Obligations, including any security therefor. Notwithstanding the foregoing, Guarantor shall be entitled to assert rights, setoffs, counterclaims and other defenses which Obligor may have to performance of any of the Obligations and also shall be entitled to assert rights, setoffs, counterclaims and other defenses that the Guarantor may have against the Guaranteed Party, other than defenses based upon lack of authority of Obligor to enter into and/or perform its obligations under the Agreement or any insolvency, bankruptcy, reorganization, arrangement, composition, liquidation, dissolution or similar proceeding with respect to Obligor.

4. Term. This Guaranty shall continue in full force and effect until the satisfaction in full by Obligor of all of the Obligations under the Agreement. Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise. Guaranteed Party shall return this original executed document to Guarantor within twenty (20) days of termination of this Guaranty.

5. Subrogation. Until all Obligations are indefeasibly performed in full, but subject to Section 6 hereof, Guarantor hereby waives all rights of subrogation, reimbursement, contribution and indemnity from Obligor with respect to this Guaranty and any collateral held therefor, and Guarantor hereby subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations.

6. Expenses. Whether or not legal action is instituted, Guarantor agrees to reimburse Guaranteed Party on written demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Guaranteed Party in enforcing its rights under this Guaranty, which reimbursement shall not be included within or count towards the Maximum Guaranteed Amount hereunder. Notwithstanding the foregoing, the Guarantor shall have no obligation to pay any such costs or expenses if, in any action or proceeding brought by Guaranteed Party giving rise to a demand for payment of such costs or expenses, it is finally adjudicated that the Guarantor is not liable to make payment under Section 2 hereof.

7. Assignment. Guarantor may not assign its rights or delegate its obligations under this Guaranty in whole or part without written consent of Guaranteed Party, provided, however, that Guarantor may assign its rights and delegate its obligations under this Guaranty without the consent of Guaranteed Party if (a) such assignment and delegation is pursuant to the assignment and delegation of all of Guarantor's rights and obligations hereunder, in whatever form Guarantor determines may be appropriate, to a partnership, limited liability company, corporation, trust or other organization in whatever form that succeeds to all or substantially all of Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, provided, such entity has an Investment Grade Rating by either Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc. ("S&P"). For purposes of this Section 7, "Investment Grade Rating" means a minimum credit rating for senior unsecured debt or corporate credit rating of BBB- by S&P or Baa3 by Moody's. Upon any such delegation and assumption of obligations and, if required, the written consent of Guaranteed Party (which consent shall not be unreasonably withheld, conditioned or delayed), Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption.

8. Non-Waiver. The failure of Guaranteed Party to enforce any provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce same. All remedies of Guaranteed Party under this Guaranty shall be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. The terms and provisions hereof may not be waived, altered, modified or amended except in a writing executed by Guarantor and Guaranteed Party.

9. Entire Agreement. This Guaranty and the Agreement are the entire and only agreements between Guarantor and Guaranteed Party with respect to the guaranty of the Obligations of Obligor by Guarantor. All agreements or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

10. Notice. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by Guarantor or by Guaranteed Party shall be in writing and shall be deemed received (a) if given personally, when received, (b) if mailed by certified mail (postage prepaid and return receipt requested), five days after deposit in the U.S. mails, (c) if given by facsimile, when transmitted with confirmed transmission or (d) if given via overnight express courier service, when received or personally delivered, in each case with charges prepaid and addressed as follows (or such other address as either Guarantor or Guaranteed Party shall specify in a notice delivered to the other in accordance with this Section):

If to Guarantor:

[]
[]
[]
[]
Attn: []

If to Guaranteed Party:

Puget Sound Energy, Inc.
355, 110th Avenue Northeast
Bellevue, WA 98004
Attn: General Counsel
Email:
Telephone: lorna.luebbe@pse.com

with a copy to:

[]
[]
[]
[]

11. Counterparts. This Guaranty may be executed in counterparts, each of which when executed and delivered shall constitute one and the same instrument.

12. Governing Law; Jurisdiction. This Guaranty shall be governed by and construed in accordance with the laws of the state of Washington without giving effect to principles of conflicts of law. Guarantor and Guaranteed Party agree to the non-exclusive jurisdiction of any federal district court located in King County, Washington over any disputes arising or relating to this Guaranty.

13. Further Assurances. Guarantor shall cause to be promptly and duly taken, executed, acknowledged and delivered, such further documents and instruments as Guaranteed Party may from time to time reasonably request in order to carry out the intent and purposes of this Guaranty.

14. Limitation on Liability. Except as specifically provided in this Guaranty, Guaranteed Party shall have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Obligor in the Agreement.

/SIGNATURE PAGE FOLLOWS/

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty as of the date first set forth above.

[____],
a [_____]

By: _____
Name:
Title:

By: _____
Name:
Title:

Acknowledged and agreed:

Puget Sound Energy, Inc.

By: _____
Name:
Title:

EXHIBIT E

FORM OF LETTER OF CREDIT

[LETTERHEAD]

[Date]

Irrevocable Standby Letter of Credit No. [_____]

Beneficiary:

Puget Sound Energy, Inc.
355 10th Ave NE
Bellevue, WA 98004-5591

Attn: [Name]
[Title]
[Phone]
[] (fax)

Applicant:

[] on behalf of [] LLC
[]
Attn: Credit Department

Dear Madam or Sir:

We hereby establish for the account of [] LLC (the “Account Party”), our irrevocable standby letter of credit in your favor for an amount of USD \$[] ([] Dollars United States currency) (the “Available Amount”). Account Party has advised us that this letter of credit is issued in connection with the Power Purchase Agreement, dated as of [], 20[] between Account Party and Beneficiary (as amended and as may be further amended, supplemented or otherwise modified). This letter of credit shall (i) become effective immediately for the term of one (1) year and shall expire on [] (the “Expiration Date”), and (ii) is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized officer of Beneficiary, dated the date of presentation presented at our office located at [] (or at any other office which may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a “Business Day”). If we receive your presentation at such office on any Business Day, all in conformity with the terms and conditions of this letter of credit, we will unconditionally honor the same by making payment in accordance with your payment instructions on or before the third

succeeding Business Day after such presentation. Partial and multiple drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, that the Available Amount shall be reduced by the amount of each such drawing.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized officer of Beneficiary, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the preceding Business Day.

3. It is a condition of the letter of credit that it shall be deemed to be automatically extended without amendment for additional one-year periods until [] (the "Final Expiration Date"), unless at least thirty (30) days prior to the Expiration Date we send you notice by registered mail, return receipt requested or courier service or hand delivery at the above address that we hereby elect not to consider this letter of credit extended for such additional period.

4. This letter of credit shall be governed by, and construed in accordance with, the terms of the International Standby Practices, ISP 98, International Chamber of Commerce Publication No. 590 (the "ISP"), to the extent that such terms are not inconsistent with this letter of credit. As to matters not governed by the ISP, this letter of credit shall be governed by, and construed in accordance with, the laws of the State of New York, including, without limitation, the Uniform Commercial Code as in effect in the State of New York.

5. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1, 2 and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph 5.

6. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no. [].

All commissions, expenses, and charges incurred with this Letter of Credit are for the account of the [Applicant].

Very truly yours,

[LOC Issuer]

Authorized signature

ANNEX 1
TO LETTER OF CREDIT NO. [_____]

Draft under Letter of Credit No. [_____]

[Month, Day , Year]

On [third business day next succeeding date of presentation]

Pay to [_____] U.S. \$ [_____] [*not to exceed the Available Amount*]

[*Address 1*]

[*Address 2*]

[insert any wire instructions]

For value received and charge to account of Letter of Credit No. [_____].

By: _____

Title: _____

ANNEX 2

TO LETTER OF CREDIT NO. [_____]

Drawing under Letter of Credit No. [_____]

The undersigned, a duly authorized officer of [____], a [____] located in [____], (“Beneficiary”), hereby certifies on behalf of Beneficiary with reference to irrevocable standby Letter of Credit No. [____] (the “Letter of Credit”) issued for the account of [____], that:

1. [pursuant to that certain Power Purchase Agreement between Beneficiary and *[account party]* dated as of [____], 20[____] an Event of Default as defined in said Agreement has occurred and as a result, the Beneficiary is entitled to payment of an amount equal to [____] Dollars (\$[____]) from this Letter of Credit;]

--or--

[(A)(i) Beneficiary has received notice from the Issuing Bank pursuant to Section 3 of the Letter of Credit, and (ii) the Letter of Credit will expire in fewer than thirty (30) Days from the date hereof (B) in the case of the Final Expiration Date, the Letter of Credit will expire in fewer than thirty (30) days and [____] has not provided replacement Credit Support pursuant to Article 5 of that certain Power Purchase Agreement between Account Party and Beneficiary. As such, as of the date hereof Beneficiary is entitled to draw under the Letter of Credit as specified in the accompanying sight draft.]

2. by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$[____], as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft;
3. the amount specified on the sight draft accompanying this certificate does not exceed the Available Amount to which Beneficiary is entitled to draft under said Power Purchase Agreement as of the date hereof.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized officer as of the date and year written below.

Date: _____

By: _____

Title: _____

ANNEX 3

TO LETTER OF CREDIT NO. [_____]

Notice of surrender of Letter of Credit No. [_____]

Date: [_____]

Attention: Letter of Credit Department

Re: Letter of Credit No. [_____] issued for the account of [*account party*]

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the “Letter of Credit”). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

[_____]

By: _____

Title: _____

EXHIBIT F

COMMERCIAL OPERATION CERTIFICATE

The undersigned, Haymaker Energy Project LLC (“Seller”) [and _____ (“Licensed Professional Engineer”)] make[s] the following certifications to Puget Sound Energy, Inc. (“Purchaser”), dated as of [____]. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Power Purchase Agreement dated [____], 20[____] between Seller and Purchaser (the “Agreement”).

Seller hereby certifies that:

1. The Final Nameplate Capacity of the Project is [____] MW_{AC}.
2. Except for punch list items that would not materially affect the performance, reliability, or safe operation of the Project, the same has been erected and installed by the respective suppliers (including the Contractor, the “Suppliers”), has been completed in accordance with the material applicable specifications under the respective supply agreements, and is ready for continuous generation and delivery of Energy to the Delivery Point in compliance with all Applicable Laws and Governmental Approvals.
3. Except for punch list items that would not materially affect the performance, reliability, or safe operation of the Project, as required under the Agreement, all requirements necessary to achieve commercial operability thereof have been substantially completed.
4. Seller’s Interconnection Facilities have been completed in accordance with applicable specifications, tariffs, laws and Governmental Approvals to enable power generated by the Project to be received at the Delivery Point.
5. Seller has obtained all Governmental Approvals necessary for the Project to continuously generate and deliver Energy to the Delivery Point and the same is in compliance with all such Governmental Approvals and all other Applicable Laws in all material respects.
6. All necessary arrangements for the prudent and proper operation and maintenance of the Project have been put in place and are in full force and effect.
7. Seller has a valid leasehold or real property interest in the Site for a term of at least twenty (20) years from the Commercial Operation Date.

Licensed Professional Engineer certifies that:

1. We have read the Agreement, the supply agreements, the engineering, procurement and construction contract, and we understand the requirements for the Commercial Operation Date under the Agreement, the specifications and performance testing requirements under the supply agreements, and the requirements for commercial operation and/or substantial completion under the engineering, procurement, construction and contract.

2. We have reviewed the material and data made available to us by the Seller, the Suppliers, and the Contractor for the Project.
3. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Project and in the course of this review we have not discovered any material errors or omissions in the work performed to date.
4. We have reviewed the certifications of Seller above, and find the representations provided to be correct in all material respects.
5. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of [____], 20[___] commercial operation of the Project has occurred as defined in the Agreement.

Executed this [] day of [], 202[]

SELLER

[]
a []

By: _____
Name:
Title:

LICENSED PROFESSIONAL ENGINEER

[Name of Licensed Professional Engineer]
a []

By: _____
Name:
Title:

ACCEPTED BY:

PUGET SOUND ENERGY, INC.

By: _____
Name:
Title:

EXHIBIT G

MILESTONE SCHEDULE

MILESTONE	DATE
System Impact Study Complete:	[]
Transmission and Interconnection Facilities Studies Complete:	[]
Large Generator Interconnection Agreement Executed:	[]
Real Estate Site Control Complete:	[]
Permitting Complete:	[]
Major Equipment Commitment Date:	[]
Target Construction Start Date:	[]
Interconnection Upgrades Complete:	[]
Backfeed Date:	[]
Initial Synchronization Date:	[]
Target Commercial Operation Date:	[]
Guaranteed Commercial Operation Date:	[]

EXHIBIT H⁹

[WIND] PERFORMANCE GUARANTEES

Section 1. Definitions.

Capitalized terms used in this Exhibit H and not defined in this Exhibit will have the meaning assigned in Annex I.

“Annual Report” is defined in Section 2.4 of this Exhibit.

“Available Resource” shall be determined by averaging the wind speed measured by the Turbine-mounted anemometers, or by other industry-approved remote sensing technology, across the Project.

“Availability Damages” is defined in Section 2.2 of this Exhibit.

“Availability Factor” means a percentage calculated as (a) 100, multiplied by (b) the result of (i) the sum of all Delivered Energy and Lost Delivered Energy in the relevant Availability Period or Contract Year, as applicable, divided by (ii) the Expected Energy in the relevant Availability Period or Contract Year, as applicable.

“Availability Period” means each period of two successive Contract Years other than the first Contract Year.

“Availability Shortfall” means, for any Availability Period where the Guaranteed Availability is not met, an amount of Energy, expressed in MWh, equal to (a) the Guaranteed Availability Factor minus the Availability Factor during such Availability Period, multiplied by (b) the Expected Energy for such Availability Period.

“Average Energy Value” means, for any Availability Period, the simple average of the Mid-Columbia Flat Price for each month in the applicable Availability Period.

“Average Environmental Attribute Value” means the fair market price (expressed in \$/MWh or \$/MW, as applicable) of Attributes of the same vintage and quality as the RECs to be transferred under this Agreement, determined by averaging the price quotes from two independent third party brokerage services, reasonably selected by Purchaser.

“Damages Rate” means, for any Availability Period, an amount equal to the Average Energy Value for such period, plus the Average Environmental Attribute Value for such Availability Period, minus the Contract Rate, provided that the Damages Rate will never be less than \$0/MWh.

⁹ **Note to Draft:** Exhibit to be used for a wind PPA.

“Expected Energy” means an amount for any given measurement period calculated by applying the Available Resource to the Reference Power Curve. The calculation shall assume that (i) the Project is one-hundred percent (100%) available and (ii) the Turbines perform as designed by the manufacturer. Losses as reported in the Wind Resource Assessment shall be applied to the calculation. The calculation of the Expected Energy shall include a correction for air density.

“Guaranteed Availability” is defined in Section 2.1 of this Exhibit.

“Guaranteed Availability Factor” means ninety percent (90%).

“Lost Delivered Energy” means, for any measurement period, the amount of Energy (based on actual wind and availability data during such measurement period) equal to the difference between the amount of Delivered Energy in such measurement period and the aggregate amount of Energy that would have been Delivered Energy in such measurement period, but for (i) a Purchaser Voluntary Curtailment, (ii) a System Curtailment Order, (iii) an event of Force Majeure, (iv) a Purchaser Event of Default or failure to perform, and (v) Weather Events.

“Mid-Columbia Day-Ahead Off-Peak Price” shall mean the “ELECTRICITY-MID C OFF-PEAK-ICE” price, as published by the Intercontinental Exchange for the applicable day of delivery.

“Mid-Columbia Day-Ahead Peak Price” shall mean the “ELECTRICITY-MID C PEAK-ICE” price, as published by the Intercontinental Exchange for the applicable day of delivery.

“Mid-Columbia Flat Price” shall mean the weighted average of the Mid-Columbia Day-Ahead Off-Peak Prices and Mid-Columbia Day-Ahead Peak Prices for the applicable month of delivery, weighted by the on-peak and off-peak percentages based on the Wind Resource Assessment.

“Reference Power Curve” means the Turbine manufacturer’s reference power curve used in the Wind Resource Assessment. The Reference Power Curve shall not be subject to adjustment for any reason.

“Weather Event” shall mean any condition causing a Turbine to not generate or deliver Energy as a result of icing on Turbine blades, lightning strikes, wind speeds in excess of, or below, the cut in/out speed for the Turbines (as specified in the manufacturers’ recommendations for such Turbines), and any period during which a hail or tornado warning exists, provided that (i) such Weather Event is not attributable to fault or negligence on the part of Seller, (ii) such Weather Event is caused by factors beyond Seller’s reasonable control, and (iii) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, Seller has been unable to prevent, avoid, mitigate or overcome such event or consequences.

“Wind Resource Assessment” means the wind resource assessment report utilized by the Seller or the Lenders to determine the estimated annual generation of the Project prepared by Seller

after the Major Equipment Commitment Date, a complete and unredacted copy of which shall be provided to Purchaser no later than sixty (60) days prior to the Commercial Operation Date.

Section 2. Availability Guarantee.

2.1. Availability Guarantee. Seller guarantees that the Project will achieve an Availability Factor during each Availability Period equal to or greater than the Guaranteed Availability Factor (the “Guaranteed Availability”).

2.2. Availability Damages. For any Availability Period during which Seller fails to achieve the Guaranteed Availability, Seller will pay Purchaser liquidated damages in the amount equal to the product of (a) the Availability Shortfall, *times* (b) the Damages Rate (“Availability Damages”). Except as provided in Section 9.1(a)(vi), the payment of Availability Damages shall be Purchaser’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any Availability Shortfall. If a payment is due from Seller, Seller shall include on the next invoice issued pursuant to Section 2.5 after the delivery of Annual Report, or as soon as reasonably practicable thereafter, a credit for such Availability Damages. Purchaser shall be permitted to net the amount of any Availability Damages against any amounts due and owing from Purchaser to Seller, regardless of whether or not Seller has yet to include such amounts on the next invoice to be issued. The provisions of Section 2.5(d) of this Agreement shall apply, *mutatis mutandis*, to any disputed amounts with respect to such invoices.

2.3. Calculation of Lost Delivered Energy. Lost Delivered Energy shall be calculated by applying the Available Resource in such measurement period to the Reference Power Curve.

2.4. Reporting.

a. From and after the Commercial Operation Date, Seller shall calculate the Delivered Energy, Lost Delivered Energy and Expected Energy on an hourly basis and, on a quarterly basis no later than the tenth (10th) day after the end of each quarterly period during a Contract Year, Seller shall furnish Purchaser with a report detailing the foregoing for the prior quarter. If requested by Purchaser, Seller shall also furnish detailed backup data supporting the calculations in such report, including the hour counters and event code reporting on a Turbine by Turbine basis as returned by the Turbine controllers and SCADA system for the Project and any adjustments made to such hour counter and event code reporting by Seller. If requested by Purchaser, the Parties shall meet to discuss and use commercially reasonable efforts to agree upon any reasonably proposed adjustments to the various hour counters and event codes returned by the Turbine controllers and the SCADA system, with any Disputes arising therefrom being subject to Section 11.16.

b. No later than the thirty (30) days after each Availability Period, Seller shall deliver to Purchaser a report detailing the Delivered Energy, Lost Delivered Energy and Expected Energy on an hourly basis during such Availability Period and calculating the Availability Factor for such Availability Period and the amount of any Availability Damages, if any, due to Purchaser (the “Annual Report”). If requested by Purchaser, Seller shall also furnish detailed backup data supporting the calculations in the Annual Report, including the hour counters and event code reporting on a Turbine by Turbine basis as returned by the Turbine controllers and SCADA system

for the Project and any adjustments made to such hour counter and event code reporting by Seller. If requested by Purchaser, the Parties shall meet to discuss and use commercially reasonable efforts to agree upon any reasonably proposed adjustments to the various hour counters and event codes returned by the Turbine controllers and the SCADA system, and Seller's calculation of the Availability Factor for such Availability Period, with any Disputes arising therefrom being subject to Section 11.16.

c. All reports and data contemplated by this Section 2.4 shall be furnished in their native readable format (e.g., while providing a pdf is permissible, it shall be accompanied by the original report and data in its native software format such that it is capable of being read electronically by Purchaser).

EXHIBIT H¹⁰

[SOLAR] PERFORMANCE GUARANTEES

Capitalized terms used in this Exhibit H and not defined in this Exhibit will have the meaning assigned in Annex I.

“Annual Report” is defined in Section 2.2 of this Exhibit.

“Credited Output” means, for any relevant period the (a) Delivered Energy in such period plus (b) the Excused Output in such period.

“Deficiency Payment” means a payment in US dollars equal to the Production Deficiency *multiplied* by the positive difference, if any, of the Green Power Price *minus* the Contract Price.

“Excused Output” means, for any relevant period, and without duplication, the Deemed Delivered Energy in such period plus the amount of Energy that would have been Delivered Energy in such period, based on actual meteorological and availability data, but for (a) a Force Majeure event, (b) a System Curtailment Order, (c) additional time required for Planned Outages due to requests for changes by Transmission Provider or Purchaser under this Agreement or (d) an act or omission of Purchaser that is in material breach of this Agreement or in violation of Applicable Law. For the sake of clarity, Seller shall not be entitled to claim credit for Excused Output to the extent the events or circumstances resulting in what would otherwise be considered Excused Output hereunder are the primary result of the negligence or fault of Seller or are otherwise primarily caused by Seller.

“Forecasted Annual Production” means the certain MWh quantity for each Contract Year as set forth in Table A below, which shall be adjusted by Seller (and concurred with by the Independent Engineer) within thirty (30) calendar days of the Commercial Operation Date solely to account for the Final Nameplate Capacity.

“Green Power Price” means the sum of (a) the weighted average of the Mid-Columbia Day-Ahead Price at the Delivery Point during the applicable Contract Year (weighted by reference to the Potential Energy for each hour of the applicable Contract Year) plus (b) the price for Attributes associated with energy generated from any solar generating facility located in [_____] and of the same vintage as the Contract Year in which the applicable Production Deficiency occurred. The price in subpart (b) above will be determined by taking the average of three dealer quotes representing a live offer to sell Renewable Energy Credits of the type and quality described in subpart (b) and in a quantity equal to the Production Deficiency.

“Guaranteed Minimum Output” means ninety percent (90%), multiplied by the Forecasted Annual Production for such Contract Year.

¹⁰ **Note to Draft:** Exhibit to be used for a solar PPA.

“Monthly Report” is defined in Section 2.1 of this Exhibit.

“Potential Energy” means, for any given relevant period, the amount of Energy that would have been Delivered Energy in such period based on actual meteorological data and assuming one hundred percent (100%) availability without the occurrence of any events or circumstances that would result in any Excused Output.

“Production Deficiency” means, for any Contract Year, the quantity, in MWhs, determined by subtracting (a) Credited Output in the Contract Year, from (b) the Guaranteed Minimum Output for such Contract Year; provided, however, that Production Deficiency will never be less than zero.

Section 2. Reporting

2.1. From and after the Commercial Operation Date, Seller shall calculate on an hourly basis the Credited Output in such hour. On a monthly basis no later than the tenth (10th) day after the end of each month during a Contract Year, Seller shall furnish Purchaser with a report detailing the foregoing for the prior month detailing the Credited Output for each hour of such month (including an itemization of the Delivered Energy and Excused Output for each such hour) and calculating the Production Deficiency, if any, using for purposes of this monthly report a Contract Year equal to the prior rolling twelve (12) month period (inclusive of the month in question) (the “Monthly Report”). If requested by Purchaser, Seller shall also furnish reasonably detailed backup data supporting the calculations in the Monthly Report.

2.2. No later than thirty (30) days after each Contract Year, Seller shall deliver to Purchaser a report detailing the Credited Output for each hour of such Contract Year (including an itemization of the Delivered Energy and Excused Output for each such hour) and calculating the Production Deficiency, if any, and the amount of any Deficiency Payment, if any, due to Purchaser (the “Annual Report”). If requested by Purchaser, Seller shall also furnish reasonably detailed backup data supporting the calculations in the Annual Report.

2.3. All reports and data contemplated by this Section 2 shall be furnished in their native readable format (e.g., while providing a pdf is permissible, it shall be accompanied by the original report and data in its native software format such that it is capable of being read electronically by Purchaser).

Section 3. Deficiency Payment.

3.1 If at the end of a Contract Year during the Term the Project fails to achieve the Guaranteed Minimum Output, then Seller shall pay to Purchaser as liquidated damages an amount equal to the Deficiency Payment. For sake of clarity, no Deficiency Payment shall be due if the Credited Output is greater than the Guaranteed Minimum Output for such Contract Year.

3.2 Seller’s computation of the amount due to Purchaser pursuant to Section 3.1 of this Exhibit H (if any) shall be included in the invoice covering the last calendar month of each Contract Year.

3.3 For the avoidance of doubt, the Deficiency Payment shall be calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Minimum Output

B = the Credited Output for the Contract Year

C = the Green Power Price for the Contract Year

D = the Contract Price

Table A: Forecasted Annual Production

Contract Year	Energy (MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	

14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit K-2. Form Battery Tolling Agreement

Confidential

For reference only.

PSE is not requesting a redlined form agreement as part of a bidder's RFP proposal.

This working draft is subject to change, does not constitute a binding offer, shall not form the bases for an agreement by estoppel nor otherwise, and is conditioned upon each party's receipt of all required management approvals (including final credit and legal approval) and all regulatory approvals. Any action taken by a party in reliance on the terms set forth in this working draft or on statements made during negotiations pursuant to this working draft shall be at that party's own risk. Until this agreement is negotiated, approved by management, executed, delivered and approved by all required regulatory bodies, no party shall have any other legal obligations, expressed or implied, or arising in any other manner under this working draft or in the course of negotiations.

[PROJECT NAME]

ENERGY STORAGE SYSTEM TOLLING AGREEMENT

Between

PUGET SOUND ENERGY, INC.

as Customer

and

[_____]

as Service Provider

dated as of

[____], 20[__]

[____] COUNTY, [____]

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Exhibit F	-	Milestone Schedule
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Exhibit I	-	Guaranteed Roundtrip Efficiency
Exhibit J	-	Material Permits and Material Governmental Approvals
Exhibit K	-	Customer Benefit Plan Survey

Confidential

ENERGY STORAGE SYSTEM TOLLING AGREEMENT

This ENERGY STORAGE SYSTEM TOLLING AGREEMENT (this “Agreement”) is made this [___] day of [___], 20[___] (the “Effective Date”), by and between Puget Sound Energy, Inc., a Washington corporation (“Customer”) and [___], a [___] (“Service Provider”). Customer and Service Provider are each individually referred to herein as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, Service Provider intends to construct, own, and operate a [___] MW_{AC}/[___] MWh stand-alone battery energy storage system (as more particularly described in Exhibit A, the “Project”); and

WHEREAS, Service Provider desires to sell and provide to Customer, and Customer desires to purchase and receive from Service Provider, the capacity of the Project, and Customer desires to provide the electricity to charge the Project and to receive the electricity discharged by the Project, together with the Ancillary Services (defined below) and other Storage Services (defined below) from the Project purchased by Customer from Service Provider, in each case pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 GENERAL TERMS AND CONDITIONS

1.1 Definitions. The capitalized terms in this Agreement shall have the meanings set forth herein, including in the definitions attached and incorporated hereto as Annex I, whether singular or plural or in the present or past tense.

1.2 Interpretation.

(a) Any reference to an agreement or document (including those set forth electronically on an internet web site) or a portion or provision thereof shall be construed as a reference to same as has been, or may be, amended, supplemented or otherwise modified and in effect from time to time;

(b) Any reference to Applicable Law and to terms defined in, and other provisions of, Applicable Law (including those set forth electronically on an internet web site) shall be references to the same (or a successor to the same) as has been, or may be,

amended, supplemented or otherwise modified and in effect from time to time during the Term;

(c) Any reference to a Person or entity shall include that Person or entity's successors and permitted assigns;

(d) Any reference to a Governmental Authority shall be construed as including a reference to any Governmental Authority succeeding to all or a portion of its functions and capacities during the Term;

(e) Any reference to a particular Article, Section, Exhibit or Annex shall be a reference to the relevant Article of, Section of, Exhibit to, or Annex to, this Agreement, unless specifically noted otherwise;

(f) The words "herein," "hereafter," "hereunder" and similar words shall be construed as a reference to this Agreement as a whole and not to any particular portion or provision of this Agreement;

(g) Words in the singular may be interpreted as referring to the plural and vice versa, and words denoting natural persons may be interpreted as referring to other types of Persons and vice versa;

(h) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied;

(i) References to "dollars"; "\$"; "Dollars" or other similar verbiage shall refer to the legal tender of the United States of America;

(j) References to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time;

(k) The masculine shall include the feminine and neuter and vice versa;

(l) Whenever this Agreement refers to a number of days, such number shall refer to the number of calendar days unless Business Days are specified. A requirement that a payment be made (or an obligation be performed or a requirement be satisfied) on or by a day that is not a Business Day shall be construed as a requirement that the payment be made (or obligation be performed or requirement be satisfied) on or by the next following Business Day; and

(m) Whenever the term "include," "includes" or "including" is used herein, such term shall be deemed to be followed by the words "without limitation" and construed as being illustrative and inclusive of but not exhaustive or limited to the items that follow.

ARTICLE 2 PROVISION OF STORAGE SERVICES; OPERATION

2.1 *Provision of Storage Services.*

(a) Generally. In accordance with the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the Term, Service Provider shall sell and provide Storage Services to Customer, and Customer shall purchase and accept from Service Provider, all of such Storage Services in accordance with the terms of this Agreement. Service Provider's obligation to provide any such Storage Services is contingent upon Customer supplying the Charging Energy necessary for such service, and Service Provider is required to operate the Project in a manner that is consistent with the Prudent Operating Practices.

(b) Storage Payment. Commencing on the Commercial Operation Date and continuing thereafter for each month of the Term, Customer shall pay to Service Provider an amount (as adjusted pursuant to this Section 2.1, the "Storage Payment") equal to (i) the Contract Price *multiplied by*, (ii) the Effective Capacity, *multiplied by* (iii) the Availability Adjustment for such calendar month, *minus* (iv) the Roundtrip Efficiency Adjustment, *minus* (v) the greater of (1) the Capacity Adjustment and (2) the Discharge Spread Adjustment, *minus* (vi) any Sharing Event Liquidated Damages that may have accrued in a given month; provided, however, that if the first or last calendar month included in the Term is less than a full calendar month, then the Storage Payment for such month shall be prorated by the ratio of the number of days in such month that are included in the Term to the total number of days in such month.

(c) Roundtrip Efficiency Adjustment. Service Provider guarantees that, from and after the Commercial Operation Date, the Roundtrip Efficiency will equal or exceed the Guaranteed Roundtrip Efficiency. For each month of the Term following the Commercial Operation Date (prorated for any partial month at the beginning or end thereof) with respect to which the Roundtrip Efficiency (as determined by the most recently completed Performance Test) is less than the Guaranteed Roundtrip Efficiency, the Storage Payment shall be reduced by an amount calculated as follows (the "Roundtrip Efficiency Adjustment" or "RTEAdj"):

If $RTE < RTEG$, then:

$$RTEAdj = [1 - (RTE / RTEG)] \times (MWh_{actual} \times \text{Proxy Energy Price}) \times [1.3]$$

where:

RTE = the Roundtrip Efficiency (as determined by the most recently completed Performance Test)

RTEG = the Guaranteed Roundtrip Efficiency

MWh_{actual} = the amount of Charging Energy delivered in the affected month

Proxy Energy Price = the [Mid-Columbia Average Day-Ahead Peak Price]¹ during the times that Charging Energy is delivered to the Project during affected month

(d) Capacity Adjustment and Discharge Spread Adjustment. Service Provider guarantees that, from and after the Commercial Operation Date, the Effective Capacity will equal or exceed the Contract Capacity. For each month of the Term following the Commercial Operation Date, the Storage Payment shall be subject to reduction by the greater of the Capacity Adjustment and the Discharge Spread Adjustment.

(i) The Capacity Adjustment shall be calculated as follows:

(A) If the Capacity Ratio is below []% and greater than or equal to []%, then the Storage Payment shall be reduced by an amount equal to (X) the greater of (a) the Contract Price and (b) the Monthly CONE, *multiplied by* (Y) the difference between the Contract Capacity and the Effective Capacity, *multiplied by* (Z) []; and

(B) If the Capacity Ratio is below []%, then the Capacity Adjustment shall be an amount equal to (X) the greater of (a) the Contract Price and (b) the Monthly CONE, *multiplied by* (Y) the difference between the Contract Capacity and the Effective Capacity, *multiplied by* (Z) [].

(ii) The “Discharge Spread Adjustment” shall be equal to the sum, for each hour when a Dispatch Instruction has been delivered by Customer and the actual Charging Energy or Discharged Energy is more than []% of the Dispatch Instruction in any hour or the actual Charging Energy or Discharged Energy (plus any Excused Energy) is less than []% of the Dispatch Instruction in any hour, equal to (A) the absolute value of the difference between the quantity of Energy that should have been charged or discharged by the Project consistent with the Dispatch Instruction and the quantity of Energy actually delivered in such hour (plus any Excused Energy), *multiplied by* (B) the Discharge Spread for such hour.

¹ **Note to Draft:** Pricing subject to change depending on the location of the applicable Project.

provided, that if a Performance Test is performed in a given month that changes the Capacity Ratio for part of such month, the Capacity Adjustment shall be adjusted on a pro rata basis by the ratio of the number of days in such month that a given Capacity Ratio applies.

(e) Sharing Event Liquidated Damages. If during any Sharing Event Hour (and regardless of whether the result of the applicable Sharing Calculation for the Customer in such hour is positive or negative) the Project failed to deliver the amount of Energy specified by Customer (except to the extent of any Excused Energy), Service Provider shall pay Customer liquidated damages in an amount equal to (A) []% of the [Mid-Columbia Average Day-Ahead Peak Price]², *multiplied by* (B) the difference in quantity of Energy that should have been discharged by the Project consistent with the Discharging Notice and the quantity of Discharged Energy actually delivered in such Sharing Event Hour (plus any Excused Energy) (such damages “Sharing Event Liquidated Damages”).

(f) Full Compensation. The Storage Payment constitutes the full compensation due to Service Provider for the Storage Services. The Storage Payment shall not be subject to adjustment on account of any tariff, regulatory, market or other similar changes. For the sake of clarity, except as provided in Section 2.4 below with respect to certain taxes, as between the Parties, Service Provider shall be responsible for any and all costs or charges imposed on or allocated to Service Provider or the Project by any Governmental Authority or Transmission Provider (including any costs or charges allocated to Service Provider or the Project under any OATT and associated with the Attributes of the Project) arising prior to the Interconnection Point, and Customer shall be responsible for any and all costs or charges imposed on or allocated to Service Provider or the Project by any Governmental Authority or Transmission Provider (including any costs or charges allocated to Service Provider or the Project under any OATT and associated with the Attributes of the Project) arising at and after the Interconnection Point.

2.2 Attributes.

(a) Attributes. Customer shall be entitled to, for no additional consideration, all Attributes (including, for the sake of clarity, all Ancillary Services) associated with the Project and Storage Services, regardless of the type or form of such Attributes or when such Attributes may come into existence or be acquired by Service Provider, subject to Section 2.2(b).

² **Note to Draft:** Subject to change depending on the location of the applicable Project.

(b) Project Qualification. Service Provider will use commercially reasonable efforts (including complying with all applicable reporting requirements and executing any and all documents or instruments reasonably necessary) to cause the Project to qualify for all Attributes available throughout the Term of this Agreement; provided, however that in the event Service Provider's reasonable, actual out-of-pocket costs and expenses to qualify Attributes existing at the Effective Date exceed [] (\$[]³) during any Contract Year, Service Provider shall be entitled to reimbursement from Customer for such costs and expenses in excess of the foregoing amount; provided, further, however, that with respect to future Attributes which did not exist or were not registered at the Effective Date, (i) the Customer shall notify the Service Provider in writing of any such Attributes for which Customer desires the Service Provider to provide from the Project, (ii) the Service Provider shall provide the Customer with Service Provider's reasonable estimate of the incremental out-of-pocket costs the Service Provider expects to incur in connection with providing such Attributes including any capital costs and (iii) in the event that the Customer agrees in writing to reimburse the Service Provider for all of its reasonable, actual out-of-pocket costs incurred in connection with providing such Attributes, Service Provider shall undertake any necessary projects and execute any and all documents or instruments to qualify for the applicable Attribute and transfer such Attribute to Customer. If for any reason an Attribute cannot be transferred to Customer, the Customer shall be entitled to any revenues received by Service Provider (and other economic benefits, if any) for providing Attributes, after deduction of all reasonable, actual out-of-pocket costs of Service Provider necessary to provide such Attributes that were not previously reimbursed by Customer.

(c) Storage Attribute and Capacity Attribute Registration. Service Provider shall, at Service Provider's sole cost and expense, take all commercially reasonable steps and actions prior to the Commercial Operation Date to ensure the Storage Attributes and Capacity Attributes existing as of the Effective Date are available from the Project and registered in the applicable states and under the applicable OATTs (in such registry(ies) as are reasonably specified in advance by Customer) and transferred to Customer pursuant to this Agreement. Service Provider shall, at Service Provider's sole cost and expense, update and maintain such registrations consistent with Applicable Law then in effect. Service Provider shall use commercially reasonable efforts to register the Project with the WRAP Program in accordance with the applicable rules and protocols thereof. Subject to Section 2.2(b), Service Provider shall register with any other registry for such Storage Attributes or Capacity Attributes as may be requested by Customer from time to time, at Customer's sole cost and expense.

(d) Delivery. Service Provider shall, at Service Provider's sole cost and expense, deliver and convey the Attributes existing as of the Effective Date within thirty

³ **Note to Draft:** Subject to change depending on the size of the applicable Project.

(30) Days after the end of the month in which such Attributes are created. In the event that during the Term any of the Attributes cannot be transferred to Customer, Service Provider shall arrange for an alternative mutually acceptable method of assigning to Customer all rights and authority necessary for Customer to register, hold, and manage such Attributes in Customer's own name and for Customer's account.

(e) Change in Law. In the event of a change in Applicable Law that prevents Service Provider from assigning Attributes to Customer that Customer is entitled to receive pursuant to this Agreement, if Service Provider realizes the monetary value of such Attributes, Service Provider shall, within thirty (30) days of actual receipt of such revenues, pay to Customer the amount that Service Provider actually receives (net of any costs, taxes or expenses Service Provider incurs to receive such amounts) as a result of its ownership of the applicable Attributes. Service Provider shall use commercially reasonable efforts to maximize the value received by Service Provider with respect to any such Attributes.

(f) Reporting and Public Statements. Unless required by Applicable Law (in which case Service Provider shall notify Customer of such requirement a reasonable time prior to compliance therewith), Service Provider shall not report to any Person that the Attributes belong to any Person other than Customer, and Customer may report under any such program that the Attributes belong to Customer. Service Provider shall maintain and make available to Customer all statements and records reasonably required to properly document compliance with Service Provider's obligations to Customer with respect to the Attributes.

(g) Additional Documents. Service Provider shall provide such additional documents and instruments as are reasonably requested by Customer to effect or evidence transfer of the Attributes to Customer or its designees. Each Party shall promptly give to the other Party copies of all documents it submits to any Governmental Authority to effectuate or record any such transfers.

2.3 Incentives. Notwithstanding anything to the contrary in this Agreement, Service Provider shall be entitled to all Incentives relating in any way to this Agreement and/or the Project, including, for the avoidance of doubt, the provision of the Storage Services. Customer acknowledges that Service Provider has the right to sell any Incentives to which it is entitled pursuant to this Section 2.3 to any Person other than Customer at any rate and upon any terms and conditions that Service Provider may determine in its sole discretion without liability to Customer hereunder. Customer shall have no claim, right or interest in such Incentives or in any amount that Service Provider realizes from the sale of such Incentives.

2.4 Taxes. In addition to the amounts otherwise payable by Customer in accordance with this Section 2.4, Customer and Service Provider agree that the sale of Storage Services qualifies for a deduction from Washington public utility tax and the sale of Attributes is not subject to Washington State and Local Sales and Use Taxes. In the event the sale of Attributes becomes subject to Washington State and Local Sales and Use Taxes, Customer shall pay (and shall

indemnify and hold Service Provider harmless on an after-tax basis from and against) all Washington State and Local Sales and Use Taxes arising out of or with respect to the purchase or sale of Attributes that are imposed by any taxing authority at or after the Interconnection Point (regardless of whether such Washington State and Local Sales and Use Taxes are imposed on Customer or Service Provider), together with any interest, penalties or additions to tax payable with respect to such Washington State and Local Sales and Use Taxes. Service Provider shall pay (and shall indemnify and hold Customer harmless on an after-tax basis from and against) all other taxes, including taxes arising out of or with respect to the purchase or sale of Storage Services and/or Attributes that are imposed by any taxing authority prior to the Interconnection Point, taxes based on or measured by net income, business and occupation taxes, public utility taxes, property taxes, replacement taxes and/or special assessments that may be levied upon the Project as well as state or local sales taxes applicable to the construction, maintenance, repair or operation of the Project, together with any interest, penalties or additions to tax payable with respect thereto.

2.5 Billing and Payment. Billing and payment for the Storage Payment and any other amounts due and payable hereunder shall be as follows:

(a) Service Provider shall calculate the amount of the Storage Payment. No later than the tenth (10th) Day of each calendar month, Service Provider shall deliver to Customer an electronic invoice showing: (i) the amount of Storage Payment for the preceding calendar month (pro-rated as appropriate in the case of the first month or the final month of the Term), and (ii) any other amounts owed by one Party to the other Party pursuant to this Agreement. When applicable under this Agreement, Service Provider shall also set forth the applicable [Mid-Columbia]⁴ prices and provide supporting documentation. Customer shall pay to Service Provider, by wire transfer of immediately available funds to an account specified in writing by Service Provider or by any other means agreed to by the Parties in writing from time to time, the undisputed amount set forth as due in such invoice no later than thirty (30) Days after receipt of each invoice therefor.

(b) The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the Storage Services during the monthly billing period under this Agreement, including any related damages calculated pursuant to Section 2.11, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

(c) Within two (2) years after receipt of any invoice, either Party may provide written notice to the other Party of any alleged error therein and the Parties shall meet, by

⁴ **Note to Draft:** Subject to change depending on the location of the applicable Project.

telephone conference call or otherwise within ten (10) Days of the other Party's receipt of such notice, for the purpose of attempting to resolve the dispute. If either Party in good faith disputes any portion of the charges contained in an invoice, the paying Party will pay the undisputed portion and may withhold the disputed portion of the invoice in accordance with Section 11.16.

(d) If Customer in good faith disputes an invoice, Customer shall provide Service Provider with a written explanation specifying in detail the basis for the dispute, and Customer shall pay the undisputed portion of the invoice in accordance with this Section 2.5. Disputed portions of Service Provider's invoice shall be due and payable no later than ten (10) days after resolution of the dispute. Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate equal to the Prime Rate then in effect plus one percent (1%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law ("Late Payment Rate"). If, as a result of a Dispute settled in favor of Customer, a refund is owed to Customer, then the amount of the overpayment shall bear interest from the date on which such payment was made by Customer through and including the date that the overpayment is refunded by Service Provider at an annual rate equal to the Late Payment Rate.

(e) Statements or invoices shall be sent to Customer by electronic mail to the electronic mail address designated in Section 11.5. Customer may change the electronic mail address by providing written notice to Service Provider.

(f) To the extent that at the end of the Term, after offsetting all amounts owed by one Party to the other Party, one Party owes any amount to the other Party, such Party shall pay such amount to the other Party within thirty (30) days after the expiration of the Term.

2.6 Title and Risk of Loss. Customer shall retain title to all Energy provided by Customer at the Interconnection Point at all times. Customer shall be deemed to have exclusive control and possession with respect to the Energy delivered under this Agreement and be responsible for any damage or injury caused thereby before the Charging Energy is delivered to the Interconnection Point and after the Discharged Energy is received at the Interconnection Point. After delivery of the Charging Energy to the Interconnection Point and until its redelivery to the Interconnection Point as Discharged Energy, Service Provider shall be deemed to have exclusive control and possession with respect to the Energy and be responsible for any damage or injury caused thereby. Title and risk of loss with respect to Attributes that are not capable of being delivered to the Interconnection Point shall pass from Service Provider to Customer when the same first come into existence. For the avoidance of doubt, the Parties agree that the transfer of title to

Attributes occurs in the state of [Washington]⁵ or any other state in which such Attributes are registered. Service Provider represents and warrants to Customer on a continuing basis that (i) it has not sold, pledged, assigned, transferred or otherwise disposed of, and will not sell, pledge, assign, transfer or otherwise dispose of, any of the Storage Services or Energy or Attributes associated with the Project to any Person other than Customer, and (ii) that it will deliver to Customer the Discharged Energy and Attributes free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Interconnection Point.

2.7 *Interconnection and Transmission.*

(a) Service Provider shall be responsible for all work and requirements necessary to interconnect the Project to the Interconnection Point. Customer shall arrange for all transmission services necessary to transmit Energy between the Interconnection Point and Customer's system; provided, however, that Service Provider shall be responsible for all upgrade costs associated with interconnecting the Project to the Interconnection Point (including, for sake of clarity any network upgrades and upgrade costs for affected systems). [In the event that any such network upgrade or affected system costs are or would reasonably be expected to be reimbursable to Customer (i.e., acting as the "merchant" function of Puget Sound Energy, Inc.) from the transmission function portion of Puget Sound Energy, Inc. that is acting as the Transmission Provider, (i) Customer shall use commercially reasonable efforts to obtain such reimbursement, and (ii) Customer shall pay any such amounts actually received by Customer to Service Provider in conjunction with the next Storage Payment due after such reimbursement has been received by Customer. Service Provider shall ensure that the Interconnection Agreement provides that the entire Project has elected to receive Network Resource Interconnection Service with the Transmission Provider.]

(b) In the event that: (i) Transmission Provider takes any action or orders Customer or Service Provider to take any action (not arising from Service Provider's failure to comply with Applicable Law, Prudent Operating Practices or this Agreement) that affects Customer's ability to deliver Charging Energy or take delivery of Discharged Energy at the Interconnection Point hereunder, then Customer shall use commercially reasonable efforts (at its own cost and expense) to mitigate the adverse effects of such action(s) on Customer's ability to perform its obligations hereunder, or (ii) Transmission Provider takes any action or orders Customer or Service Provider to take any action (not arising from Customer's failure to comply with Applicable Law, Prudent Operating Practices or this Agreement) that affects Service Provider's ability to receive Charging Energy at the Interconnection Point or deliver Discharged Energy hereunder to the Interconnection Point, then Service Provider shall use commercially reasonable efforts (at

⁵ **Note to Draft:** Subject to change depending on the location of the applicable Project.

its own cost and expense) to mitigate the adverse effects of such action(s) on Service Provider's ability to perform its obligations hereunder. The Parties acknowledge that upon such order to curtail transmission service it may be difficult or impossible for the Parties to mitigate the adverse effects of such action(s).

2.8 *Scheduling; Imbalance Charges.*

(a) Scheduling.

(i) With respect to any and all scheduling requirements, (a) Service Provider must cooperate with Customer with respect to scheduling Charging Energy and Discharged Energy, and (b) each Party will designate authorized representatives to communicate with regard to scheduling and related matters arising under this Agreement. Each Party must comply with the applicable variable resource standards and criteria of any applicable Governmental Authority, as applicable.

(ii) Within ten (10) days of the Effective Date, Service Provider must execute and submit to Customer a consent as required by Transmission Provider that allows Customer to read the meter and receive any and all data from Transmission Provider relating to Charging Energy, Discharged Energy and other matters relating to the Project without the need for further consent from Service Provider.

(b) Dispatch.⁶

(i) Beginning on the Commercial Operation Date, Customer will provide Dispatch Instructions for the Project either: (i) using Generator Set-Points transmitted by the Balancing Authority (at Customer's request) to the Project control system installed by Service Provider, and Service Provider shall cause its Project control system to comply with the Generator Set-Points so transmitted; (ii) by telephonic communication, and Service Provider shall promptly comply with Customer's Dispatch Instruction; or (iii) as mutually agreed upon by the Parties; provided, however, that all Dispatch Instructions shall be consistent with the operating parameters described in Exhibit B and be within the Project's capabilities, as reported in the Project's real-time SCADA. If Service Provider fails to comply with Customer's valid and proper Dispatch Instruction by ten (10) MW or more and such failure lasts for more than [five (5)] minutes (and such failure is not due to a Force Majeure event, a curtailment order, a breach of this Agreement

⁶ **Note to Draft:** For off-system projects, the dispatch process requires further discussion among the Parties.

by Customer or any other act or omission of Customer), Service Provider shall pay Customer liquidated damages equal to \$[] for each such failure to comply.

(ii) The Generator Set-Points are communicated electronically through the SCADA system. Service Provider shall ensure that, throughout the Term, the SCADA signal is capable of functioning on all Generator Set-Points within the margin of error specified in the Project control system manufacturer's set point margin of error.

(iii) Unless otherwise directed by Customer, Service Provider shall ensure that the Project's control system is in "remote" Generator Set-Point control during normal operations.

(iv) Service Provider will allow Customer access to its plant-level data from the BESS Controller, and Service Provider will comply with Applicable Law and applicable critical infrastructure protection requirements.

(v) Service Provider shall provide Customer, in a timely manner and at Customer's request, with access to any requested data points transmitted to the Balancing Authority, including state of charge, MW available for sixty (60) minutes, voltage, MVA and MVAR.

2.9 *Project Operations and Maintenance; Access.*

(a) During the Term, the Project shall be operated and maintained by Service Provider or its designee in accordance with Prudent Operating Practices, Applicable Law, this Agreement and the Interconnection Agreement. The cost of such operation and maintenance is included in the Contract Price and Customer shall have no responsibility for any such costs under any circumstances whatsoever. Service Provider shall obtain all certifications, permits, licenses, insurance and approvals necessary to construct, operate and maintain the Project and to perform its obligations hereunder. Service Provider shall use good faith efforts to maximize the Effective Capacity of the Project (up to the Contract Capacity).

(b) As soon as reasonably practicable, and in any event no later than two-hundred and seventy (270) Days prior to the expected Commercial Operation Date, Service Provider shall provide proposed written operating procedures for the Project and submit such proposed procedures to Customer for Customer's review and approval (as approved by Customer, the "Operating Procedures"). Customer shall have [ninety (90) Days] from the date it receives the proposed Operating Procedures to review and provide comments to Service Provider. Service Provider shall incorporate all of Customer's reasonable comments into the final Operating Procedures, which shall be subject to approval by Customer. The final Operating Procedures may be amended from time to time. Either party may propose a change to the procedures and the other party shall have ninety (90) Days

from the date it receives the proposed Operating Procedure to review and provide comments to the other party. The Parties agree that the Operating Procedures will cover the protocol under which the Parties will perform their respective obligations under this Agreement and will include, but will not be limited to, procedures concerning the following: (i) the method of day-to-day communications and reporting; (ii) key personnel lists for Service Provider and Customer; (iii) reasonable coordination regarding the timing of scheduled maintenance and Planned Outages and Augmentation Outages; (iv) reporting of scheduled maintenance, Planned Outages, Augmentation Outages and Forced Outages of the Project; and (v) ongoing reporting of projected capacity reductions due to Planned Outages, Augmentation Outages or Forced Outages reasonably foreseeable by Service Provider.

(c) [Twice yearly in February and September], Service Provider will provide Customer a non-binding Planned Outage and Augmentation Outage schedule for the forthcoming [eighteen (18)] months. Service Provider shall be excused from providing electricity during any Planned Outage and Augmentation Outage to the extent thereof (but without limiting Service Provider's Performance Guarantee obligations set forth in Exhibit G). Except to the extent that a Planned Outage or Augmentation Outage is necessary or advisable in accordance with Prudent Operating Practices, Planned Outages and Augmentation Outages shall not be scheduled during any Summer Months or Winter Months and the sum of all Planned Outages and Augmentation Outages in a year shall not exceed [fourteen (14)] days. Service Provider shall provide Customer with prompt notice of any Planned Outage or Augmentation Outage scheduled or anticipated during any Summer Months or Winter Months, which notice shall be at least ten (10) Business Days prior to the commencement of such Planned Outage or Augmentation Outage, except to the extent that such Planned Outage is necessary or advisable in accordance with Prudent Operating Practices to be conducted less than ten (10) Business Days prior to the provision of such notice.

(d) Service Provider shall notify Customer with as much advance notice as practicable of any proposed or necessary maintenance outages, including Planned Outages and Augmentation Outages. The Parties shall work to plan such outage to mutually accommodate, as practicable, the reasonable requirements of Service Provider and service obligations of Customer.

(e) Customer and its representatives will have the right of ingress to and egress from the Project during normal business hours upon reasonable advance notice to Service Provider and for any purposes reasonably connected with this Agreement, including for the purpose of inspecting the Project, the Site, and/or Service Provider's construction, operation and/or maintenance of the Project; provided that Customer and its representatives shall comply with Service Provider's safety and security rules while at the Site and any such visit to the Site shall not unduly interfere with the construction, operation and/or maintenance of the Project.

2.10 Charging and Discharging the Project.

(a) During the Term, Customer shall have the exclusive right to schedule or designate the Project to deliver and make available the Storage Services to Customer and/or accept Charging Energy, in accordance with the Operating Procedures and the requirements of this Agreement. Subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures, Customer will have the exclusive right to charge and discharge the Project seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Instructions to Service Provider. Each Charging Notice will be effective unless and until Customer modifies such Charging Notice by providing Service Provider with an updated Charging Notice, and each Discharging Notice will be effective unless and until Customer modifies such Discharging Notice by providing Service Provider with an updated Discharging Notice. Service Provider shall charge (from Charging Energy) and discharge the Project in strict compliance with Customer's Dispatch Instructions.⁷

(b) Customer shall be responsible for arranging, managing, purchasing, scheduling, and delivering to the Interconnection Point all Charging Energy necessary to charge the Project in connection with this Agreement. In no event shall Service Provider be permitted to provide Charging Energy for use in the Project.

(c) Service Provider shall not charge or discharge the Project during the Term other than pursuant to a Charging Notice, a Discharging Notice, the Operating Procedures, or in connection with a Performance Test conducted in accordance with the requirements of this Agreement. If during the Term, Service Provider (i) charges the Project to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or Operating Procedures or (ii) except as permitted under the Operating Procedures, charges the Project without Customer providing a Charging Notice ("Excess Charging Energy"), then, in each case: (A) Service Provider shall be responsible for all costs and expenses associated with such Excess Charging Energy; (B) Customer shall not be required to pay for such Excess Charging Energy; and (C) Customer shall be entitled to discharge such Excess Charging Energy and to all of the benefits (including Storage Services) associated with discharging such Excess Charging Energy.

2.11 Performance Guarantees. Service Provider guarantees that the Project will satisfy the performance guarantees set forth in Exhibit G (the "Performance Guarantees"). Not later than thirty (30) days following the end of each Contract Year, Service Provider shall provide to Customer a written report detailing Service Provider's calculations in respect of the applicable Performance Guarantee for such period as required pursuant in Exhibit G. Service Provider shall

⁷ Note to Draft: Off-system dispatch subject to revisions to reflect requirement of applicable Transmission Provider and Balancing Authority.

also furnish all underlying data utilized in such calculations and such report will be provided in their native readable format to the extent that it is capable of being read electronically by the Customer. The Service Provider shall comply with requests for data and information, and otherwise reasonably cooperate with Customer in respect of, the use of any battery optimization software arrangements that the Customer may employ.

2.12 *Energy Imbalance Market.* Customer participates in the Energy Imbalance Market operated by CAISO. Accordingly, Service Provider shall designate the Project as a participating resource (or its equivalent from time to time) in the Energy Imbalance Market, with Customer acting as Scheduling Coordinator (as defined in the CAISO OATT) for the Project. Service Provider shall design and construct the Project, all at Service Provider's cost and expense, such that it complies with any necessary requirements in order for the Project to be designated as a participating resource in the Energy Imbalance Market. Service Provider shall work with Customer to take any steps necessary to ensure that the Project qualifies as a participating resource in the Energy Imbalance Market during the Term.

2.13 *Market Structure; WRAP Program.* The Storage Services provided by Service Provider (to and at the Interconnection Point) and transmission obligations of Customer (from and after the Interconnection Point) outlined in this Article 2 reflect the market structure under which the Project will operate as of the Commercial Operation Date and the WRAP Program as of the Effective Date. If (i) there are material market structure changes during the Term that prevent Service Provider from satisfying its obligations under this Agreement to receive Charging Energy at the Project, store such Energy at the Project and deliver Discharged Energy from the Project to the Interconnection Point, or that prevent Customer from delivering Charging Energy to the Interconnection Point or meeting its transmission obligations with respect to Discharged Energy from and after the Interconnection Point, (ii) Transmission Provider or Customer joins a regional transmission organization or independent system operator structure during the Term, or (iii) there are changes to the WRAP Program that result in a material impact on either Party's performance or obligations under this Agreement, the Parties will use commercially reasonable efforts to amend this Agreement to enable Service Provider or Customer to meet such scheduling, delivery and transmission obligations within the new market structure and/or the revised WRAP Program rules and in a manner that (A) maintains the existing allocation of scheduling, delivery and transmission obligations between Service Provider and Customer under this Agreement, or to enable Transmission Provider or Customer, as applicable, to participate in such regional transmission organization or independent system operator structure, subject in all cases to Section 2.2 and (B) preserves the economic terms and conditions of this Agreement (including economic benefits, risk allocation, costs and liabilities).

2.14 *Service Provider's Assistance.* Service Provider covenants to provide commercially reasonable cooperation to Customer at Customer's request in supporting efforts by Customer to oppose any action of any regulatory body having jurisdiction thereover to direct the material modification of terms or conditions of this Agreement.

ARTICLE 3 TERM

3.1 *Term.* The “Term” of this Agreement shall be the Initial Term plus any Renewal Term, such Renewal Term at Customer’s sole election pursuant to the terms of Section 3.3 hereof.

3.2 *Initial Term.* The initial term (the “Initial Term”) shall commence on the Effective Date and shall continue until the date that is [] Contract Years following the Commercial Operation Date.

3.3 *Negotiation Period at End of Initial Term.* Upon notice specifying the initially proposed transaction terms delivered to Service Provider at least eighteen (18) months but not more than twenty-four (24) months prior to the expiration of the Term, Customer shall be entitled to require Service Provider to enter into good faith negotiations on an exclusive basis with Customer with respect to Customer’s ability to renew this Agreement for an additional period (any such period the “Renewal Term”) at the Contract Price or upon other pricing terms negotiated by the Parties. Service Provider shall respond to any request and commence negotiations with Customer within fifteen (15) Business Days of receipt of notice from Customer. In the event that prior to the date twelve (12) months prior to the expiration of the Term, Service Provider and Customer do not enter into an amendment to this Agreement for a Renewal Term, Service Provider shall be under no further obligation to negotiate exclusively with Customer with respect to the Storage Services, and Service Provider may proceed with negotiations with respect to or definitive agreements to effect the sale of the Storage Services thereafter without restriction.

3.4 *Right of First Offer.* If, at any time during the Term or for a period of one (1) year thereafter, or if either Party terminates this Agreement (other than due to an Event of Default by Customer), for a period of one (1) year from the date upon which such termination occurs (such period, the “Exclusivity Period”), should Service Provider desire to enter into an obligation or agreement to sell or otherwise transfer directly or indirectly, (A) a fifty percent (50%) or greater interest in the assets comprising the Project or (B) a fifty percent (50%) or greater interest (equity or voting) in Service Provider, in any such case to any third party, Service Provider shall furnish Customer with written notice thereof; provided, that the foregoing shall not apply to any transaction in which the direct or indirect interest in Service Provider being transferred constitutes less than twenty-five percent (25%) of the value of such transaction. Within thirty (30) days of Customer’s receipt of such notice, Customer shall notify Service Provider if Customer is interested in negotiating the purchase of the Project. If Customer so notifies Service Provider of its interest, then Service Provider shall promptly and in good faith provide Customer with such diligence information as may be reasonably related to the valuation and condition of the Project and the Parties shall negotiate in good faith for at least ninety (90) days in an effort to reach a mutually acceptable purchase transaction. If notwithstanding such negotiations the Parties fail to reach such agreement within such ninety (90) day period, then Service Provider shall be permitted for the next one hundred and eighty (180) days to enter into an agreement on substantially similar or more favorable (to Service Provider) terms and pricing than the last offer made by Customer to Service Provider pursuant to this Section 3.4. If Service Provider fails to enter into such an agreement

within such one hundred and eighty (180)-day period, then the provisions of this Section 3.4 shall once again apply.

3.5 *Purchase Option.*

(a) Grant of Option. In consideration of the promises and mutual representations, warranties, covenants and agreements in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider hereby grants to Customer an option (the “Option”), exercisable within ninety (90) days of either: (i) the earlier of (a) the later of (A) the [] ([]th) anniversary of the Commercial Operation Date and (B) the date on which the third-party tax equity investor or investors for the Project are no longer invested in the Project; or (b) the [] ([]th) anniversary of the Commercial Operation Date or (ii) the [] ([]th) anniversary of the Commercial Operation Date, to acquire all tangible and intangible assets comprising the Project (collectively, the “Project Assets”).

(b) Purchase Price. The base purchase price for the Project Assets will be the Fair Market Value. For the purposes of this Section 3.5, the “Fair Market Value” of the Project Assets shall be the cash amount that the Project Assets would realize if sold in the open market by a Service Provider that is sophisticated and willing but not acting under duress to a Customer that is sophisticated and willing but not acting under duress, taking into account the financial condition, assets liabilities, age, income prospects, and decommissioning and reclamation obligations of or associated with the Project Assets.

(c) Due Diligence. Customer may, no earlier than thirty (30) days prior to each of the Option periods set forth in Section 3.5(a), request that Service Provider provide Customer with all due diligence materials reasonably requested by Customer regarding the Project Assets so as to permit Customer to assess the Fair Market Value thereof, and Service Provider shall promptly provide any such requested due diligence materials.

(d) Exercise of Option. In order to exercise the Option, Customer shall furnish to Service Provider a non-binding notice of election, including therewith its calculation of the Fair Market Value. If the Service Provider disagrees with Customer’s calculation of Fair Market Value, Service Provider shall provide written notice to the Customer within thirty (30) days of its receipt of the Customer’s Fair Market Value calculation contesting the results, assumptions or other factors utilized by Customer in the calculation of the Fair Market Value. Thereafter, the determination of Fair Market Value shall be made by an Independent Valuator pursuant to the procedure set forth in Section 3.5(e); provided, however, that if Service Provider does not provide any such dispute notice within such thirty (30) day period, then Service Provider shall be deemed to have agreed with the Customer’s calculation of Fair Market Value.

(e) Independent Valuator. If necessary to ascertain the Fair Market Value, each of the Parties shall designate an Independent Valuator within ten (10) days from the date

of the disputing Party's notice, if any, pursuant to Section 3.5(d). A qualified Independent Valuator shall be an Independent Valuator with at least five (5) years' experience in the valuation of power projects comparable to the Project, and shall not have performed any work for either of the Parties or any of their respective Affiliates within the three (3) year period prior to its appointment. Each of the two (2) Independent Valuators shall be directed to determine the Fair Market Value within thirty (30) days of appointment and to notify the Parties in writing of its determination. If the two (2) determinations differ by less than five percent (5%), the average of the two determinations shall be deemed to be the Fair Market Value, respectively. If the two (2) determinations differ by five percent (5%) or more, then the two (2) Independent Valuators shall, within five (5) days after receipt of both valuations, (i) appoint a third Independent Valuator with similar qualifications (which shall not have performed any work for either of the Parties or any of their respective Affiliates within the three (3) year period prior to its appointment) and (ii) furnish to such third Independent Valuator their written valuation reports. Within thirty (30) days of appointment, the third Independent Valuator shall determine the Fair Market Value, which determination shall not be less than the lower of the two (2) determinations and shall not be greater than the higher of the two (2) determinations, and shall notify the Parties of such determination, which shall be binding upon the Parties. The Parties shall each bear the cost of the Independent Valuator appointed by it, and they shall share equally the cost of any third Independent Valuator.

(f) Closing. The closing of the sale of the Project Assets shall occur no later than ninety (90) days following the Parties' agreement on the Fair Market Value (or later, to the extent reasonably necessary to obtain any required third party and/or governmental consents), and the sale shall include customary representations and warranties, including representations and warranties related to authority, due execution, ownership, and the ability of the Service Provider to sell such Project Assets free and clear of any liens or other encumbrances.

ARTICLE 4 TIMELINE, DEFAULT, AND TERMINATION

4.1 *Development and Construction*. Following the Effective Date, Service Provider shall work to: (a) secure all necessary land use rights for the Site and all necessary rights of access and rights of way for Service Provider to receive and deliver Energy at the Interconnection Point; (b) complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project; (c) perform all studies, pay all fees, acquire all necessary approvals, and execute of all necessary agreements with all applicable Transmission Providers to receive and deliver Energy at the Interconnection Point; (d) acquire all Governmental Approvals and other necessary approvals for the construction, operation, and maintenance of the Project; (e) achieve all Milestones set forth in Section 4.4; and (f) achieve a Commercial Operation Date on or before the Guaranteed Commercial Operation Date. Service Provider will cause the Project to be designed, engineered, constructed, installed, operated, and maintained in accordance with Prudent Operating Practices and all Applicable Law. Notwithstanding anything to the contrary in this

Agreement, Service Provider shall not be allowed to declare the Commercial Operation Date any earlier than [].

4.2 Government Approvals. Service Provider shall secure and maintain, at no cost to Customer, all approvals, permits (including environmental permits), licenses, easements, rights-of-way, releases and other approvals of any Governmental Authority necessary for the construction, engineering, operation and maintenance of the Project, and the performance by Service Provider of its obligations hereunder (the “Governmental Approvals”). Such obligations shall include, but shall not be limited to, (i) the responsibility to comply with all applicable FERC-approved compliance and reporting responsibilities with respect to the Project required by the North American Electric Reliability Corporation or any successor electrical reliability organization, and (ii) the responsibility to qualify all Attributes in accordance with Applicable Law and the requirements set forth in this Agreement. Service Provider shall provide Customer with copies of all Material Permits and Material Governmental Approvals promptly following receipt of same.

4.3 Project Configuration; Progress Reporting; Shared Facilities.

(a) Following consultation with Customer, Service Provider shall provide the preliminary configuration, design, and specifications of the Project to the Customer before the Construction Start Date. Prior to the Commercial Operation Date, Service Provider shall be permitted to modify the initial Project configuration with Customer’s prior written consent, not to be unreasonably withheld, conditioned or delayed (it being understood that it shall be reasonable for Customer to withhold such consent if Customer determines that the proposed change by Service Provider would materially affect the storage capabilities or other characteristics of the Project). If Service Provider desires to modify the Project configuration, Service Provider shall provide Customer with the detail of such proposed modification, including all information and data as may be reasonably necessary for Customer to evaluate such proposal, including with respect to any project characteristics, equipment suppliers and technology type that Service Provider proposes to use in construction of the Project. Any such modification shall be agreed to by the Parties in writing, and thereafter, Exhibit A shall be deemed to be amended to reflect the final technology selection as so agreed. After the Commercial Operation Date, Service Provider shall prepare and provide the configuration, design, and specification of any augmentation project or other significant modification of the Project.

(b) Commencing upon the Effective Date, Service Provider shall submit to Customer, no later than the tenth (10th) Business Day of each calendar month and, commencing with the week that is two (2) months prior to the projected Commercial Operation Date, on the first Business Day of every calendar week, in each such case until the Commercial Operation Date is achieved, progress reports in a form reasonably acceptable to Customer containing updates as to development and construction status and schedules, and providing, at a minimum, a safety report and project schedule analysis of actual progress compared to planned progress by major area. In lieu of providing such

reports, Service Provider may at Customer's request provide copies of any progress report or other similar document provided to any Lender regarding construction of the Project.

(c) Following the Effective Date and continuing until the Commercial Operation Date, Service Provider shall meet with Customer upon Customer's request, no more than once per month, to provide the opportunity for discussion regarding the status of development activities; provided that Customer shall not purport to speak to third parties on behalf of Service Provider or otherwise unreasonably interfere with Service Provider's development activities. On a quarterly basis, Service Provider shall meet with Customer to provide a detailed overview and update on the status of the Project's development, including discussion of such agenda items as Customer may request reasonably in advance of such meeting. Customer may request that such meeting include both the Service Provider's Senior Management and the Customer's Senior Management. Customer shall have the right to monitor the construction, start-up and testing of the Project during normal business hours, provided that Customer provides Service Provider with at least five (5) Business Days' advance written notice and does not unreasonably interfere with Service Provider's activities, and Service Provider shall comply with all reasonable requests of Customer with respect to the monitoring of these events. Service Provider shall cooperate in such physical inspections of the Project as may be reasonably requested by Customer during and after completion of construction. All persons visiting the Project on behalf of Customer shall comply with all of Service Provider's applicable safety and health rules and requirements that are provided or identified to such persons. Customer's technical review and inspection of the Project shall not be construed as endorsing the design thereof or as any warranty of safety, durability, or reliability of the Project.

(d) Service Provider will not share ownership of, or allow any other Person to use, the Service Provider's Interconnection Facilities for any other purpose than to deliver Discharged Energy to Customer

4.4 *Schedule and Capacity Guarantees; Liquidated Damages.*

(a) The Parties agree that time is of the essence as regards the construction of the Project, and accordingly certain milestones for the construction of the Project, as set forth in the Milestone schedule attached hereto as Exhibit F ("Milestones") must be achieved in a timely fashion. Therefore:

(i) Within seven (7) days after completion of each Milestone, Service Provider shall provide Customer with notice along with accompanying documentation (including summaries of applicable agreements, Governmental Approvals, and certificates) to reasonably demonstrate the achievement of such Milestone.

(ii) If Service Provider does not achieve a Milestone by the specified date (as such date may be extended pursuant to the terms of this Agreement),

Service Provider shall submit to Customer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan (“Remedial Action Plan”) that describes in detail a reasonable course of action and plan (including accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) to achieve the missed Milestones and all subsequent Milestones; provided, however, that delivery of any Remedial Action Plan shall not relieve Service Provider of its obligation to meet any subsequent Milestones. If Service Provider fails to provide a Remedial Action Plan, then Customer may provide Notice to Service Provider and Service Provider shall have five (5) Business Days following receipt of Customer’s Notice to cure the failure to provide a Remedial Action Plan. Service Provider’s failure to provide and/or timely implement a Remedial Action Plan within the time requirements and to the extent required in this Section 4.4(a) shall be material breaches of this Agreement.

(b) In the event that Service Provider has not achieved the Construction Start Date on or before the Guaranteed Construction Start Date (as such date may be extended pursuant to the terms of this Agreement), Service Provider shall pay Customer daily delay liquidated damages in an amount per Day equal to \$[____], *multiplied by* the Planned Nameplate Capacity (in MWs) for each Day of delay beyond the Guaranteed Construction Start Date (as such date may be extended pursuant to the terms of this Agreement) until the Construction Start Date occurs shall accrue and be payable on a monthly basis, as set forth in Section 4.4(d). In the event that the Commercial Operation Date occurs on or before the Guaranteed Commercial Operation Date (as may be extended pursuant to the terms of this Agreement), any liquidated damages paid pursuant to this Section 4.4(b) shall be refunded to Service Provider without interest.

(c) In the event that the Commercial Operation Date has not occurred on or before the Guaranteed Commercial Operation Date (as may be extended pursuant to the terms hereof), Service Provider shall pay Customer daily delay liquidated damages in an amount per Day equal \$[____], *multiplied by* the Planned Nameplate Capacity (in MWs) for each Day of delay beyond the Guaranteed Commercial Operation Date until the Commercial Operation Date has been achieved.

(d) In the event that Service Provider incurs delay liquidated damages under Section 4.4(b) or Section 4.4(c), Customer shall deliver to Service Provider an electronic invoice on a monthly basis detailing any amounts Customer is entitled to receive from Service Provider as delay damages for the prior month. Not more than ten (10) Days after receipt of each such invoice, Service Provider shall pay to Customer, by wire transfer of immediately available funds to an account specified in writing by Customer or by any other means agreed to by the Parties in writing from time to time, the undisputed amount set forth as due in such invoice. The provisions of Section 2.5(d) shall apply, *mutatis mutandis*, to any disputed amounts with respect to such invoices.

(e) Each Milestone, including but not limited to the Guaranteed Construction Start Date, the Guaranteed Battery Commitment Date and the Guaranteed Commercial Operation Date, shall be extended on a day-for-day basis to the extent that Service Provider reasonably demonstrates to Customer that achievement of such Milestone by the date applicable thereto or the Commercial Operation Date by the Guaranteed Commercial Operation Date is delayed by an event of Force Majeure, delays caused by Customer, or delays caused by Transmission Provider; provided, without prejudice to Sections 2.7(b) and 10.1, that Service Provider shall use reasonable efforts to minimize any such delays. Notwithstanding the foregoing, in no event shall all such extensions exceed one hundred eighty (180) Days in the aggregate for any other reason other than in the case of delays caused by Customer.

(f) Service Provider shall not be permitted to achieve Commercial Operation of the Project unless the Contract Capacity equals or exceeds [ninety-seven percent (97%)] of the Planned Nameplate Capacity. If the Commercial Operation Date is achieved, but the Contract Capacity is less than one hundred percent (100%) of the Planned Nameplate Capacity, Service Provider shall use commercially reasonable efforts to complete one hundred percent (100%) of the Planned Nameplate Capacity by the date that is sixty (60) days after the Guaranteed Commercial Operation Date (as may be extended pursuant to the terms hereof) (the “Outside Capacity Date”). If Service Provider is unable to complete the remaining Planned Nameplate Capacity by the Outside Capacity Date, Service Provider shall make a one-time payment of liquidated damages to Customer in the amount of Two Hundred Thousand Dollars (\$200,000) for each MW (pro-rated for any partial MWs) that the Contract Capacity is below the Planned Nameplate Capacity.

4.5 *Certain Early Termination Events*

(a) In the event that the Construction Start Date has not occurred on or before the date that is ninety (90) Days after the Guaranteed Construction Start Date (as extended pursuant to the terms hereof), Customer shall be permitted (without limiting Service Provider’s obligations under Section 4.4(b) regarding the payment of liquidated damages) to terminate this Agreement effective upon written notice to Service Provider. In such instance, Service Provider will pay to Customer within ten (10) Business Days the Pre-COD Termination Payment as Customer’s sole and exclusive remedy, and Service Provider’s sole and exclusive liability, therefor.

(b) In the event that the Battery Commitment Date has not occurred on or before the Guaranteed Battery Commitment Date and Service Provider fails to submit or implement the Remedial Action Plan in accordance with Section 4.4(a)(ii), Customer shall be permitted to terminate this Agreement effective upon written Notice to Service Provider. In such instance, Service Provider will pay to Customer within ten (10) Business Days the Pre-COD Termination Payment.

(c) In the event that the Commercial Operation Date has not occurred on or before the date that is one hundred eighty (180) Days after the Guaranteed Commercial Operation Date (as extended pursuant to the terms hereof), Customer shall be permitted (without limiting Service Provider's obligations under Sections 4.4(c) regarding the payment of liquidated damages) to terminate this Agreement effective upon written notice to Service Provider. In such instance, Service Provider will pay to Customer within ten (10) Business Days an amount equal to the Pre-COD Termination Payment.

(d) As used herein, the "Pre-COD Termination Payment" shall be an amount equal to [] Dollars (\$[]) per MW_{AC} of the Planned Nameplate Capacity. For the avoidance of doubt, (i) any Pre-COD Termination Payment shall be in addition to, and not net of, any delay liquidated damages paid or payable by Service Provider and otherwise without set-off or netting of any kind; provided, that if, as a result of failing to cause the Commercial Operation Date or occur on or before the Guaranteed Commercial Operation Date, Service Provider pays delay damages pursuant to Section 4.4(c) for a period greater than one hundred and eighty (180) days, the Pre-COD Termination Payment shall be reduced by the amount of such delay damages paid for any days in excess of one hundred eighty (180) days.

(e) In the event of a termination pursuant to Section 4.5(a), 4.5(b) or 4.5(c), the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination; provided that such termination shall not discharge or relieve either Party from any obligation that by its terms requires or contemplates performance after such termination event, any obligation which has accrued prior to such termination, any indemnity obligations under Article 8 or the provisions of Section 11.1 or any liability for fraud, which provisions shall survive any termination of this Agreement.

(f) In the event of a termination of this Agreement by Customer pursuant to Section 4.5(a) or 4.5(b), for a period of twelve (12) months thereafter, Service Provider will not enter into an obligation or agreement to sell Storage Services from the Project to any third party, unless Service Provider first offers, in writing, to sell to Customer such Storage Services from the Project on the same material terms and conditions (excluding price, a proposal for which shall be communicated in such offer) as this Agreement (the "First Offer"). Within thirty (30) days of Customer's receipt of such First Offer, Customer shall notify Service Provider if Customer is interested in accepting such First Offer and/or negotiating the pricing terms therefor. If Customer so notifies Service Provider of its interest, then the Parties shall negotiate in good faith for at least ninety (90) days in an effort to reach a mutually acceptable transaction. If notwithstanding such negotiations the Parties fail to reach such agreement within such ninety (90) day period, then Service Provider shall be permitted for the next one hundred and eighty (180) days to enter into an agreement on substantially similar or more favorable (to Service Provider) terms and pricing than the last offer made by Customer to Service Provider pursuant to this Section

4.5(e). If Service Provider fails to enter into such an agreement within such one hundred and eighty (180)-day period, then the provisions of this Section 4.5 shall once again apply.

ARTICLE 5 CREDIT SUPPORT

5.1 *Credit Support.*

(a) Service Provider shall furnish to Customer, (i) within five (5) Business Days following the Effective Date, Credit Support in the amount of \$[_____] (the “Pre-Commercial Operation Date Credit Support”). Prior to the Commercial Operation Date, Service Provider’s Credit Support shall not be subject to replenishment. Upon satisfaction of the credit support requirements for the period commencing with the Commercial Operation Date in accordance with Section 5.1(b), Customer will return the Pre-Commercial Operation Date Credit Support to Service Provider.

(b) Commencing with the Commercial Operation Date and continuing throughout the Term, Service Provider shall be obligated to (i) maintain an Investment Grade Credit Rating or (ii) furnish and maintain Credit Support to Customer in the amount of \$[_____] per MW of the Contract Capacity (\$[_____] /MW). From and after the Commercial Operation Date, if the Credit Support drawn upon is in the form of cash or a letter of credit, then Service Provider shall replenish the Credit Support to the amount provided for in Section 5.1(b) within five (5) Business Days after Customer makes a draw on such Credit Support.

(c) Service Provider hereby waives any and all rights it may have to require Customer to provide financial assurances or security of any kind (including cash, letters of credit, bonds or other collateral) in respect of its obligations under this Agreement.

5.2 *Utilization of Credit Support.* Customer shall be entitled to draw upon and/or be paid from any Credit Support provided by Service Provider for any obligation of Service Provider arising under this Agreement that is not paid when due (subject to any applicable cure periods). The Credit Support provided pursuant to Section 5.1 shall be released to Service Provider within fifteen (15) Business Days following the first anniversary of the end of the Term, or any earlier termination of this Agreement, provided that if at such time there exists any pending claims against Service Provider, such Credit Support shall not be released until such claims have been satisfied in full.

5.3 *Service Provider Credit Event.* Upon the occurrence of a Service Provider Credit Event, Service Provider shall have five (5) Business Days following the earlier to occur of (i) Service Provider’s knowledge of the occurrence of such Service Provider Credit Event and (ii) Service Provider’s receipt of notice from Customer of such Service Provider Credit Event, to remedy the situation by providing replacement Credit Support meeting the requirements of Section 5.1. Service Provider shall provide Customer with Notice of a Service Provider Credit Event as

soon as reasonably practicable after Service Provider's knowledge of the occurrence of such Service Provider Credit Event. In the event that Service Provider fails to provide such replacement Credit Support within such five (5) Business Days, then an Event of Default will be deemed to have occurred and Customer will be entitled to the remedies set forth in Article 9 of this Agreement, without the application of any additional cure periods.

5.4 Letter of Credit. Any letter of credit provided pursuant to this Agreement shall be issued by a Creditworthy Bank in a form reasonably acceptable to Customer (it being agreed that the form of letter of credit attached as Exhibit D hereto is acceptable to Customer) and must provide, among other things, that the beneficiary of such letter of credit is entitled to draw the full amount of such letter of credit if: (i) the letter of credit has not been renewed or replaced within thirty (30) days prior to the expiration date of the letter of credit; or (ii) the issuer of the letter of credit is no longer a Creditworthy Bank and Service Provider has failed, within ten (10) Business Days after receipt of written notice thereof by Customer to replace such letter of credit with another letter of credit issued by a Creditworthy Bank, in a form acceptable to Customer, or other replacement Credit Support meeting the requirements of Section 5.1. Costs of a letter of credit shall be borne by Service Provider.

5.5 Reporting Requirements. If Service Provider is satisfying the Credit Support pursuant to Section 5.1(b)(i) by itself maintaining an Investment Grade Credit Rating, Service Provider shall furnish to Customer audited financial statements of Service Provider no later than one hundred twenty (120) days after the end of each fiscal year during the Term of this Agreement; provided, however that this obligation may be satisfied by the filing of such financial statements on the Securities and Exchange Commission's EDGAR or Canada's System for Electronic Document Analysis and Retrieval (SEDAR) site(s) as part of Service Provider's or such Affiliate's filing obligations under the Securities Exchange Act of 1934. If a guaranty has been provided by Service Provider to satisfy the Credit Support obligations under this Agreement, the guarantor shall furnish to Customer audited financial statements of such guarantor (or unaudited, if audited financial statements are not available) no later than one hundred twenty (120) days after the end of each fiscal year during the Term of this Agreement; provided, however that this obligation may be satisfied by the filing of such financial statements on the Securities and Exchange Commission's EDGAR site as part of Service Provider's or such Affiliate's filing obligations under the Securities Exchange Act of 1934.

ARTICLE 6

DATA, METERING AND MEASUREMENT

6.1 Metering Equipment.

(a) Service Provider:

(i) Shall provide and maintain, at its cost, appropriate Meters, metering accuracy instruments, and associated measuring and recording equipment that adhere to all applicable CAISO SQMD, National Electrical Manufacturers

Association and American National Standards Institute standards that are necessary to permit an accurate determination of the quantities of the hourly amount of Charging Energy and Discharged Energy at the Interconnection Point;

(ii) Shall provide and maintain, at its cost, appropriate Meters and associated measuring, recording, and communication equipment that adhere to all applicable Transmission Provider's standards and requirements for dispatchable intermittent renewable resources;

(iii) Shall exercise reasonable care in the maintenance and operation of any such Meters and equipment so as to assure to the maximum extent reasonably practicable an accurate determination of the quantities of the hourly (in five (5) minute intervals) Metered Energy. Service Provider's Primary Meter shall be located at the Interconnection Point or on Service Provider's side of the Interconnection Point. Except as provided in Section 6.2, Service Provider's Primary Meter shall be used for quantity measurements under this Agreement; and

(iv) May install and operate at the Project check meters to measure Metered Energy ("Service Provider's Check Meters").

(b) Service Provider shall make data from Service Provider's Primary Meter and Service Provider's Check Meter, if installed, readily available to Customer via internet link or Excel file. Customer may use data from Service Provider's Check Meters if necessary to permit verification of the Discharged Energy under this Agreement.

(c) Customer may, at Customer's option and its sole cost and expense, upon thirty (30) Days' notice, request Service Provider to install and operate at the Project check meters to measure Metered Energy ("Customer's Check Meters"). To the extent practicable, Service Provider will install such meters outside of principal generating hours Interconnection Point Discharged Energy.

6.2 *Measurement of Metered Energy.* Readings of Service Provider's Primary Meter shall be conclusive as to the amount of Discharged Energy delivered to the Interconnection Point; provided, however, that in the event, and for so long as, Service Provider's Primary Meter is out of service or is determined, pursuant to Section 6.3, to be registering inaccurately, measurement of Discharged Energy delivered to the Interconnection Point shall be determined by:

(a) Service Provider's Designated Check Meter, if installed; or

(b) In the event that Service Provider's Designated Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering inaccurately, Customer's Check Meter if installed; or

(c) In the event that (A) Service Provider's Designated Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering

inaccurately and (B) Customer's Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering inaccurately, by making a mathematical calculation of the Metered Energy delivered to the Interconnection Point based on the actual transmission and availability data during such period over which Service Provider's Primary Meter was out of service or registering inaccurately; or

(d) In the event that (A) Service Provider's Designated Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering inaccurately, (B) Customer's Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering inaccurately, and (C) the Parties reasonably determine that the mathematical calculation of the Metered Energy delivered to the Interconnection Point based on the actual transmission and availability data is not reliable as to the period over which Service Provider's Primary Meter was out of service or registering inaccurately, the Parties shall promptly meet and negotiate in good faith a method for determining Metered Energy that is fair and reasonable in the circumstances.

6.3 *Testing and Correction.*

(a) The accuracy of Service Provider's Primary Meter and Service Provider's Check Meter, if installed, shall be tested and verified by Service Provider regularly, but in any event no less than every two (2) years. Except as set forth in Sections 6.3(d)(v) and 6.3(d)(vi), Service Provider shall be responsible for all costs, including inspection and testing costs, in connection with Service Provider's Primary Meter and Service Provider's Check Meter and such cost is included in the Contract Price.

(b) The accuracy of Customer's Check Meter, if installed shall be tested and verified by Customer regularly, but in any event no less than every two (2) years. Except as set forth in Sections 6.3(d)(v) and 6.3(d)(vi), Customer shall be responsible for all costs, including inspection and testing costs, in connection with Customer's Check Meter.

(c) Each Meter shall be accurate within a zero decimal five percent (0.5%) variance.

(d) If, for any reason at any time during the Term, either Party disputes a Meter's accuracy or condition:

(i) The Party disputing the Meter's accuracy shall notify the other Party in writing;

(ii) The Party receiving such notice shall, within five (5) Days after receiving such notice, advise the other Party in writing as to its position concerning the Meter's accuracy and reasons for taking such position;

(iii) If the Parties mutually and reasonably determine that the Meter is registering outside the zero decimal five percent (0.5%) variance provided for in

paragraph (c) above, then such Meter shall be deemed to be registering inaccurately for purposes of Section 6.2;

(iv) If, within fifteen (15) Days after receipt of the notice required by clause (ii) above with respect to a given Meter, the Parties are unable to mutually agree, through reasonable negotiations, on the accuracy or condition of such Meter, then either Party may submit such Dispute to an unaffiliated third-party certified meter testing company mutually acceptable to the Parties to test the Meter, and Service Provider shall provide such third party reasonable access to the Project for purposes of testing such Meter;

(v) Following the third-party testing of a Meter provided for in Section 6.3(d)(iv), should such Meter be found (in a report distributed to both Parties) to be registering within the permitted zero decimal five percent (0.5%) variance, the disputing Party shall bear the cost of inspection and such Meter shall be deemed accurate for the purposes of calculating the Metered Energy pursuant to Section 6.2;

(vi) Following the third-party testing of a Meter provided for in Section 6.3(d)(iv), should such Meter be found (in a report distributed to both Parties) to be registering outside the permitted zero decimal five percent (0.5%) variance, the non-disputing Party shall bear the cost of inspection and such Meter shall be deemed not accurate for the purpose of calculating the Metered Energy pursuant to Section 6.2; and

(vii) Any repair or replacement of a Meter owned by Service Provider shall be made at the expense of Service Provider as soon as practicable, based on the third-party testing company's report. Any repair or replacement of a Meter owned by Customer shall be made at the expense of Customer as soon as practicable, based on the third-party testing company's report.

(e) If, upon testing, any of the Meters used to determine the amount of Metered Energy is found to be in error by more than the permitted zero decimal five percent (0.5%) variance, the quantity of Metered Energy measured since the previous test of such Meter shall be adjusted to correspond to the corrected measurements, pursuant to Section 6.2. If the difference of the payments actually made by Customer minus the adjusted payment is a positive number, Service Provider shall credit the difference, without interest, to Customer on the next invoice issued by Service Provider. If the difference is a negative number, Customer shall pay the difference, without interest, to Service Provider on the next invoice issued by Service Provider. Such payment or credit, as applicable, shall be made in accordance with Section 2.5.

6.4 *Meter Data and Records.*

(a) Service Provider shall provide Customer a report on the day immediately following the day that such data becomes available to Service Provider, indicating Service Provider's hourly delivery of Energy to Interconnection Point and fifteen-minute interval data for the prior day and, if the Parties participate in the Energy Imbalance Market, Service Provider's five-minute interval data. Service Provider's report of Energy delivery shall be sent by either: (i) a file attached to an e-mail sent to Customer; (ii) a secure FTP site to which Customer is granted access; or (iii) other method mutually acceptable to the Parties. Such file shall use comma separated value (CSV) format, or such other mutually acceptable format.

(b) Customer or its agent shall have the right to be present whenever Service Provider changes, repairs, inspects, tests, calibrates, or adjusts any of Service Provider's equipment used in measuring or checking the measurement of the amount of Energy delivered to the Interconnection Point. Service Provider shall give at least two (2) weeks' notice to Customer in advance of calibrating the meters, and three (3) days' notice to Customer in advance of taking other action that would materially affect the accuracy of the meter unless Prudent Operating Practices necessitate executing such action upon shorter notice or unless otherwise mutually agreed by Service Provider and Customer. The records from the measuring equipment shall remain the property of Service Provider, but, upon request, Service Provider shall submit to Customer its records and charts, together with calculations therefrom, for inspection, verification and copying, subject to return within ten (10) Days after receipt thereof. Service Provider agrees to retain such records for not less than twenty-four (24) months after the expiration or termination of this Agreement.

6.5 Data. Measuring equipment is installed at the Project, which has the capability of measuring and recording transmission data 24 hours per day. Service Provider shall provide Customer real time access to Service Provider's historian which contains the data from the Project's SCADA system. The method by which Service Provider provides transmission data to Customer may be amended by mutual agreement of the Parties from time to time. For clarity, Service Provider's obligation to maintain the data referenced in this Section 6.5 shall be subject to the recordkeeping and audit provisions contained in Section 11.7 of this Agreement.

ARTICLE 7 REPRESENTATIONS, WARRANTIES, AND COVENANTS

7.1 *Service Provider's Representations and Warranties.*

(a) Service Provider represents and warrants as follows:

(i) Service Provider is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of [____], and authorized to conduct business in State of [____];

(ii) Service Provider has the power and authority to enter into and, subject to Service Provider obtaining the approvals provided for in Section 4.5(b), perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;

(iii) Service Provider has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;

(iv) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by Service Provider with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval (except for those approvals set forth in Section 4.2) that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Service Provider or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Service Provider is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) With the exception of the actions set forth in Section 4.2 and Section 4.5(b), Service Provider has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(vi) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Service Provider or Service Provider's Guarantor, or to its knowledge threatened against Service Provider;

(vii) There are no actions, proceedings, suits, rulings or investigations pending or, to Service Provider's knowledge, threatened against Service Provider or any of its Affiliates that could be reasonably expected to adversely affect Service Provider's ability to perform its obligations under this Agreement;

(viii) This Agreement is a legal, valid and binding obligation of Service Provider enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity; and

(ix) Service Provider owns, and will at all times during the Term, own or otherwise have all rights necessary to produce and sell to Customer the

Discharged Energy and Attributes as contemplated by this Agreement, free and clear of any lien, encumbrance, claim of infringement, misappropriation or any violation of the rights of other Persons, as needed at the then-current stage of development or operation of the Project.

7.2 *Customer's Representations and Warranties.*

(a) Customer represents and warrants as follows:

(i) Customer is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Washington;

(ii) Customer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;

(iii) Customer has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;

(iv) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by Customer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Customer or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Customer is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) Customer has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(vi) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Customer, or to its knowledge threatened against Customer;

(vii) There are no actions, proceedings, suits, rulings or investigations pending or, to Customer's knowledge, threatened against Customer or any of its Affiliates that could be reasonably expected to adversely affect Customer's ability to perform its obligations under this Agreement; and

(viii) This Agreement is a legal, valid and binding obligation of Customer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

7.3 *Service Provider's Covenants.*

(a) Service Provider covenants that Service Provider shall comply with all Applicable Law, including all anti-corruption, antibribery, anti-money laundering, anti-terrorism and economic sanction and antiboycott Applicable Law.

(b) Service Provider shall notify Customer promptly, but in no event later than five (5) Business Days, after Service Provider has actual knowledge of any adverse legal action or lawsuit or investigation, against or involving the Project or Service Provider that could reasonably be expected to have a material adverse effect on the reputation of the Project.

7.4 *Labor.*

(a) Service Provider shall make a good faith effort to endeavor to hire as direct or indirect subcontractors local workers (such as M/WBE/VETs) during construction of the Project and as permanent employees or as direct or indirect subcontractors for the operation of the Project and performance of Service Provider's obligations under the terms of this Agreement; provided and only to the extent that Service Provider or its Affiliates, as applicable, determine that (i) contracting with any such persons to perform such work is cost and schedule effective with respect to the construction and/or operation of the Project, (ii) such persons satisfy Service Provider's or its Affiliate's, as applicable, then current qualifications, site safety policies, background screening, and (iii) such persons have obtained all applicable certifications that Service Provider or its Affiliates require.

(b) Service Provider shall (i) satisfy the Prevailing Wage and Apprenticeship Requirements applicable to the Project and (ii) execute an engineering, procurement and construction ("EPC") contract for the Project that complies with Washington Administrative Code, Title 296, Chapter 140 ("WAC 296-140"), which requires that the EPC contractor utilize a Project Labor Agreement, Community Workforce Agreement or Collective Bargaining Agreement (each of which as may be defined or amended in WAC 296-140), as applicable, in a reasonable and customary form, for major construction activities associated with the construction of the Project and (iii) satisfy the requirements of Washington House Bill 1589 ("HB 1589") as related to the Project. For the avoidance of doubt, satisfying HB 1589 specifically includes the requirement that the Project will be constructed by a prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements.

(c) Notwithstanding the foregoing, Service Provider shall be responsible to manage relations among Service Provider, its Affiliates, its contractors and subcontractors and other local workers.

7.5 *Certain Reporting Requirements.*

(a) Service Provider shall furnish no later than April 1 of each year and upon Customer's reasonable request (but in any event not more than twice annually), a report documenting how it has executed the project in accordance with the Service Provider's Customer Benefits Plan. Customer shall have the right to review and provide feedback (if any) on the report. In addition to the specific survey requirements contained in Exhibit K, this report must include at a minimum descriptions of the application of the labor standards in [RCW 82.08.962 and 82.12.962 and compliance with WAC 480-107-075]⁸; local tax revenues generated by the Project; land use payments associated with the Project; host community payments for those municipalities or other local administrative divisions that host the Project; activities undertaken to support development of project-related opportunities, including opportunities for women-, minority-, disabled-, and veteran-owned businesses; activities associated with facilitating a clean energy workforce, including job training, career awareness, and educational opportunities; charitable donations; and any other non-energy benefits discussed in the Service Provider's Customer Benefits Plan. The report must also describe and document how Service Provider has implemented commitments it has made in its Customer Benefit Plan and explain any material variation from those commitments. Such report shall also include the prior years' information.

(b) This report also must include, at a minimum, the reporting of metrics associated with the customer benefit indicator "increase in quality and quantity of clean energy jobs" in PSE's Clean Energy Implementation Plan ("CEIP") for 2021, as well as any CEIP approved in subsequent years. The metrics provided must include, at a minimum, the number of jobs created by the project; the number of local workers; the number of part-time and full-time jobs; the range of wages paid to workers; the extent to which additional benefits are offered; the use of apprenticeship labor; the demographics of workers, and any other relevant metrics or information that relates to the quality or quantity of jobs associated with the project. Indicators and metrics to be reported may change based on final approval of PSE's 2021 CEIP and subsequent CEIPs, at which time Customer will inform Service Provider, and Service Provider shall reasonably cooperate to revise the reporting of indicators and metrics as necessary.

(c) Throughout the development, construction, and operation of the Project, Service Provider will continue to conduct stakeholder and community engagement to

⁸ **Note to Draft:** Applicability is dependent on location of the Project.

inform the public about activities being undertaken by Service Provider related to the Project and gain community and stakeholder input on how these activities can benefit or how burdens can be reduced in these communities.

(d) Service Provider will provide updates to Customer on stakeholder and community engagement activities undertaken to support the Project, along with feedback provided by communities and other stakeholders, Service Provider's reasonable attempts to address this feedback, and plans for future engagement activities. Service Provider will provide these updates on a semi-annual basis until the commercial operation of the Project has been achieved, and following commercial operation upon Customer's reasonable request, and not more than once annually by April 1.

(e) In its reporting and updates described above, Service Provider will use its best efforts to present metrics, benefits and burdens that specifically apply to Highly Impacted Communities and Vulnerable Populations as they are defined in [WAC 480-100-605]⁹ and according to the criteria in PSE's CEIP. Service Provider will keep Customer informed as these criteria are finalized and further refined, and Customer will provide feedback and guidance to Service Provider on the methodology Service Provider uses for tracking those metrics, benefits and burdens. For projects located outside of Washington State, Service Provider will use its best efforts to present metrics, benefits and burdens based on disadvantaged communities defined and identified in the Climate and Economic Justice Screening Tool (CEJST) created by the Council on Environmental Quality as directed by Executive Order 14008 on Tackling the Climate Crises at Home and Abroad.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

8.1 *General Indemnity.*

(a) Indemnity by Service Provider. Subject to the provisions of Section 11.9, Service Provider shall release, protect, defend, indemnify and hold harmless Customer, its Affiliates, directors, officers, employees, agents, contractors and representatives, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from (i) the Charging Energy after receipt from Customer at the Interconnection Point and prior to Service Provider's re-delivery of such Energy as Discharged Energy and delivery of Attributes to the Interconnection Point, or (ii) any property damage, bodily injuries or death suffered by any third party Person (including, without limitation, employees of the Parties) related to,

⁹ **Note to Draft:** Applicability is dependent on location of the Project.

arising from, or connected to the performance or non-performance by Service Provider of its obligations hereunder.

(b) Indemnity by Customer. Subject to the provisions of Section 11.9, Customer shall release, protect, defend, indemnify and hold harmless Service Provider, its Affiliates, directors, officers, employees, agents and representatives, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from (i) Charging Energy prior to its delivery by Customer to the Interconnection Point; (ii) the Discharged Energy and Attributes once delivered to Customer at the Interconnection Point, or (iii) any property damage, bodily injuries or death suffered by any third party Person (including, without limitation, employees of the Parties) related to, arising from, or connected to the performance or non-performance by Customer of its obligations hereunder.

(c) Comparative Negligence. The indemnification provisions of this Section 8.1 shall apply notwithstanding the negligent acts or omissions of the indemnitee, but the indemnitor's liability to the indemnitee shall be reduced proportionately to the extent that a negligent act or omission of the indemnitee contributed to the loss, injury or property damage. Further, no indemnitee shall be indemnified hereunder for its loss, liability, injury and damage resulting from its gross negligence, fraud or willful misconduct.

(d) Notice and Limitation of Claims.

(i) If any Person seeking indemnification hereunder (an "Indemnified Party") believes that a claim, demand or other circumstance exists that has given or may reasonably be expected to give rise to a right of indemnification under this Section 8.1(d) (whether or not the amount thereof is then quantifiable) against a Party (the "Indemnifying Party"), such Indemnified Party shall assert its claim for indemnification by giving written notice thereof (a "Claim Notice") to the Indemnifying Party within ten (10) Business Days following receipt of notice of such claim, suit, action or proceeding by such Indemnified Party. Each Claim Notice shall describe the claim in reasonable detail. The failure of the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of liability hereunder except (and then only) to the extent that the defense of such claim, suit, action or proceeding is prejudiced by the failure to give such notice.

(ii) Upon receipt by an Indemnifying Party of a Claim Notice, the Indemnifying Party shall be entitled to (i) assume and have sole control over the defense of such action or claim at its sole cost and expense and with its own counsel if it gives notice of its intention to do so to the Indemnified Party within thirty (30) days of the receipt of such notice from the Indemnified Party; provided, that the Indemnifying Party's retention of counsel shall be subject to the written consent of the Indemnified Party if such counsel creates a conflict of interest under applicable

standards of professional conduct or an unreasonable risk of disclosure of Confidential Information concerning an Indemnified Party, which consent shall not be unreasonably withheld, conditioned, or delayed; and (ii) negotiate a settlement or compromise of such action or claim; provided, that (A) such settlement or compromise shall include a full and unconditional waiver and release of all Indemnified Parties (without any cost or liability of any nature whatsoever to such Indemnified Parties) and (B) any such settlement or compromise shall be permitted hereunder only with the written consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed.

(iii) If the Indemnifying Party elects to defend any such action or claim, then the Indemnified Party shall be entitled to participate in such defense with counsel reasonably acceptable to the Indemnifying Party, at such Indemnified Party's sole cost and expense. Notwithstanding the foregoing, if (i) a claim is primarily for non-monetary damages against the Indemnified Party or seeks an injunction or other equitable relief that, if granted, would reasonably be expected to be material to the Indemnified Party, (ii) the Indemnified Party shall have determined in good faith that an actual or potential conflict of interest makes representation of the Indemnifying Party and the Indemnified Party by the same counsel or the counsel selected by the Indemnifying Party inappropriate, or (iii) the claim is a criminal proceeding, then in each case the Indemnified Party may, upon notice to the Indemnifying Party, assume the exclusive right to defend, compromise and settle such claim and the reasonable fees and expenses of the Indemnified Party's separate counsel shall be borne by the Indemnifying Party to the extent the claim is indemnifiable hereunder. Notwithstanding anything to the contrary herein, for sake of clarity the Parties agree that the foregoing provisions shall not be construed so as to permit the Indemnified Party to control or assume the defense of any action, lawsuit, proceeding, investigation, demand or other claim brought against the Indemnifying Party concurrently with or in a joint proceeding in respect of any claim that is the subject of an indemnification claim hereunder by the Indemnified Party.

(iv) If, within thirty (30) days of receipt from an Indemnified Party of any Claim Notice, the Indemnifying Party (i) advises such Indemnified Party in writing that the Indemnifying Party shall not elect to defend, settle or compromise such action or claim or (ii) fails to make such an election in writing, such Indemnified Party may, at its option, defend, settle or otherwise compromise or pay such action or claim.

(v) Each Indemnified Party shall make available to the Indemnifying Party all information reasonably available to such Indemnified Party relating to such action or claim, except as may be prohibited by Applicable Law. In addition, the Parties shall render to each other such assistance as may reasonably be requested in order to ensure the proper and adequate defense of any such action or claim. The

Party in charge of the defense shall keep the other Party fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto.

8.2 Insurance.

(a) Service Provider, at its own cost and expense, shall maintain or cause to maintain, and keep in full force and effect from the date hereof through the later of the date of expiration or termination hereof, the following insurance coverage:

(i) Workers' Compensation Insurance for statutory obligations imposed by applicable state laws, and Employer's Liability Insurance with a minimum limits of liability bodily injury by accident of one million dollars (\$1,000,000) for each accident; bodily injury by disease one million dollars (\$1,000,000) policy limit; and bodily injury by disease one million dollars (\$1,000,000) each employee;

(ii) Commercial General Liability Insurance, including premises and operations, bodily injury, broad form property damage, products/completed operations, contractual liability and independent contractors' protective liability all with minimum limits of not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) annual aggregate, and two million dollars (\$2,000,000) products and completed operations aggregate;

(iii) Commercial Automobile Insurance with a minimum limit of one million dollars (\$1,000,000) combined single limit per accident with respect to bodily injury, property damage or death;

(iv) Umbrella Excess Liability Coverage with a minimum limit of ten million dollars (\$10,000,000) per occurrence and ten million dollars (\$10,000,000) annual aggregate. The combined liability limits may be satisfied through a combination of primary, umbrella/excess, and self-insured retention. Any self-insured retention is subject to the prior written approval of Customer, which approval shall not be unreasonably withheld;

(v) Builder's All-Risk Insurance with a minimum limit based on the total replacement cost of the Project, provided that such Builder's All-Risk Insurance shall only be required during construction of the Project;

(vi) Commencing on the Commercial Operation Date, All-Risk Property Insurance covering physical loss or damage to the Project with minimum limits based on the total replacement cost of the Project;

(vii) Service Provider and/or all of its contractors (including subcontractors) shall have Professional Liability Coverage with an aggregate limit

of not less than three million dollars (\$3,000,000), which may be maintained by a consultant or contractor engaged by or on behalf of Service Provider;

(viii) Business Interruption Insurance which amount shall cover Service Provider's continuing or increased expenses resulting from full interruption for a period of not less than six (6) calendar months and a time deductible of no more than sixty (60) days; and

(ix) Pollution Liability Insurance insuring against liability arising out of activities contemplated hereunder or as might be required by federal, state, regional, municipal and local laws, with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate. Service Provider may satisfy this requirement under Commercial General Liability insurance and Excess or Umbrella Liability insurance policies if such policies provide coverage as is provided for under a Pollution Liability insurance policy. Customer shall have the right to review such coverage within such policy and accept the terms or require additional coverage in Customer's reasonable discretion.

(b) All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date hereof through the later of the expiration or termination hereof, except as provided in Section 8.2(a)(v) or 8.2(a)(vi). If any insurance policy required to be obtained hereunder is on a "claims made" basis, Service Provider shall either maintain either "tail" coverage or continuous "claims made" liability coverage for a minimum of six (6) years following the expiration of this Agreement.

(c) Customer, its officers, agents and employees shall be named as additional insured on all Commercial General Liability, Auto Liability, and Umbrella/Excess Liability insurance policies required by the specifications hereunder to be maintained by or on behalf of Service Provider.

(d) All policies with respect to insurance maintained by Service Provider, except for the Professional Liability policy, shall waive any right of subrogation of the insurers hereunder against Customer, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

(e) All insurance coverage required by this Agreement shall be issued by an insurer with an A.M. Best's rating of not less than "A-VII" or such other insurer as is reasonably acceptable to Customer.

(f) Subject to the continued maintenance of the minimum insurance limits set forth in this Section 8.2, Service Provider, or Service Provider's Affiliate, retains the right

to make reasonable decisions regarding its Insurance and Risk Financing Programs; including insurance terms and conditions, levels of deductibles/retentions and available limits of coverage – based on insurance market conditions, available capacity and/or other events that could impact the Service Provider’s, or Service Provider’s Affiliate’s, overall cost of insuring risk.

(g) Service Provider shall notify Customer of any material change in, or cancellation of, the insurance required by this Section 8.2 at least thirty (30) Days prior to the effective date of such change or cancellation except in the case of non-payment of premiums in which case the notice shall be ten (10) Days or as soon as reasonably known.

(h) Within fifteen (15) Days after the date hereof, Service Provider shall provide to Customer and thereafter maintain with Customer a current certificate of insurance verifying the existence of the insurance coverage required by this Agreement.

ARTICLE 9 DEFAULTS AND REMEDIES

9.1 *Events of Default.*

(a) Each of the following shall constitute an “Event of Default” hereunder:

(i) Failure by a Party to make any payment required when due if such failure is not remedied within ten (10) Business Days after receipt by the Defaulting Party of written notice of such failure, provided such payment is not the subject of a Dispute;

(ii) Failure by a Party to perform any other material obligation hereunder (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after receipt by the Defaulting Party of written notice of such failure; provided that if such failure is not reasonably capable of being cured within such thirty (30) day period but is reasonably capable of cure, then for so long as the Defaulting Party has initiated and is diligently attempting to effect a cure, such Defaulting Party’s cure period shall extend for an additional sixty (60) days;

(iii) Any representation or warranty made hereunder by a Party shall have been false in any material respect when made and is not remedied within thirty (30) days after receipt of written notice of such failure;

(iv) Either Party (A) makes an assignment for the benefit of its creditors, (B) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law, (C) has such petition filed against it and such petition is not withdrawn or

dismissed for sixty (60) days after such filing, (D) becomes insolvent, or (E) is unable to pay its debts when due;

(v) Service Provider fails to establish and maintain the Credit Support as required by Article 5;

(vi) It will be an Event of Default of Service Provider if:

(A) the Roundtrip Efficiency is less than []% in each of two (2) consecutive Contract Years;

(B) the Effective Capacity is less than []% of the Contract Capacity in each of two (2) consecutive Contract Years; or

(C) the Storage Availability is less than []% in each of two (2) consecutive Contract Years.

9.2 Remedies.

(a) Upon the occurrence of an Event of Default by a Party (the “Defaulting Party”), the other Party (the “Non-Defaulting Party”) shall have the following rights and remedies:

(i) To terminate this Agreement by providing written notice to the Defaulting Party of its exercise of its termination rights, which termination shall be effective twenty (20) days after the day such notice is deemed to be delivered under Section 11.5 (the “Early Termination Date”);

(ii) To suspend performance of its obligations and duties hereunder immediately upon delivering written notice to the Defaulting Party of its intent to exercise its suspension rights;

(iii) To withhold any payments due to the Defaulting Party under this Agreement;

(iv) To recover in connection with such termination the Termination Payment set forth in Section 9.3; provided, however, that with respect to any Service Provider Event of Default prior to the Commercial Operation Date, the aggregate amount of such Termination Payment shall be equal to the then outstanding amount of Service Provider Credit Support;

(v) To exercise any rights pursuant to Section 5.2 to draw upon any Credit Support provided by the Defaulting Party (if applicable); and

(vi) To, subject to the express limitations on remedies set forth in this Agreement, pursue any other remedy given under this Agreement or Applicable Law, now or hereafter existing at law or in equity or otherwise.

(b) Each Party agrees that it 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 hereof. "Commercially reasonable efforts" by Service Provider shall require Service Provider to use commercially reasonable efforts to maximize the price for Energy and Attributes received by Service Provider from third parties.

(c) The rights and remedies of a Party pursuant to this Article 9 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

9.3 *Event of Default Termination Payment Calculation.*

(a) Upon termination of this Agreement as a result of an Event of Default, the Non-Defaulting Party shall calculate an amount (the "Termination Payment") equal to the aggregate of (i) the Market Value of this Agreement to the Non-Defaulting Party, plus (ii) any costs incurred by the Non-Defaulting Party as a result of the termination of this Agreement due to the Defaulting Party's default, plus (iii) any unpaid amounts owing under this Agreement from the Defaulting Party to the Non-Defaulting Party which arose prior to the Early Termination Date, minus (iv) any unpaid amounts owing under this Agreement from the Non-Defaulting Party to the Defaulting Party. If the Termination Payment is a positive amount, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party. If the Termination Payment is a negative amount, the amount of the Termination Payment shall be deemed to be zero and no payment shall be made to either Party. Notwithstanding the foregoing, except in the case of fraud, with respect to (i) a termination pursuant to Sections 4.5 or (ii) any Termination Payment payable under this Agreement by Service Provider for an Event of Default occurring prior to the Commercial Operation Date, the applicable Termination Payment shall be a liquidated amount equal to the Pre-COD Termination Payment.

(b) It is understood and agreed that it is not necessary for the Non-Defaulting Party to enter into a Replacement Contract to determine the per kW-month price under a Replacement Contract and if a Replacement Contract is not entered into by the Non-Defaulting Party, the per kW-month price with respect to a Replacement Contract shall be the fair market price of capacity (including the price for reasonably comparable Attributes associated therewith) that would have been payable under a Replacement Contract as determined in a commercially reasonable manner by the Non-Defaulting Party. In determining the per kW-month price when a Replacement Contract is not entered into, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power

exchanges, other bona fide third party offers and other commercially reasonable market information.

(c) For purposes of calculating Market Value under this Section 9.3, (X) the Effective Capacity of the Project used in the calculation shall be based upon reasonable assumptions regarding the future operation of the Project as determined by the Non-Defaulting Party in good faith, (Y) commercially reasonable adjustments to the Replacement Contract shall be made by the Non-Defaulting Party to take into account, among other possible commercially material differences, differences due to length of term, capacity factors, Attributes and the location of the output Interconnection Point(s) under the Replacement Contract compared to the Interconnection Point hereunder, and (Z) the discount rate to be used to determine present value as of the Early Termination Date of each future payment amount shall be the sum of [one hundred (100)] basis points plus the yield reported on page “USD” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) on the Early Termination Date for United States government securities having a maturity reasonably equivalent to the then remaining Term of this Agreement.

(d) In the event of termination pursuant to this Section 9.3, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination; provided that such termination shall not discharge or relieve either Party from any obligation that by its terms requires or contemplates performance after such termination event, and any obligation that has accrued prior to such termination or any indemnity obligations under Article 8 or the provisions of Section 11.1, which provisions shall survive any termination of this Agreement.

ARTICLE 10 FORCE MAJEURE

10.1 *Force Majeure Generally.* The performance of any obligation required hereunder shall be excused during the continuation of any Force Majeure event suffered by the Party whose performance is hindered in respect thereof, to the extent such Force Majeure event prevents the affected Party from performing its obligations under this Agreement. The affected Party’s time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure event shall be extended by a period of time reasonably necessary to compensate for the delay caused by the Force Majeure event, subject to any limitations on such extension provided for in this Agreement; provided, that the Party experiencing the delay or hindrance shall use diligent efforts to remedy or overcome the Force Majeure event and the suspension of performance shall be of no greater scope and of no longer duration than that required by the Force Majeure. The affected Party shall (i) as soon as reasonably practicable notify the other Party in writing describing in detail the occurrence of such Force Majeure event and the anticipated period of delay, but in no event shall the notification take longer than forty-eight (48) hours after the Party has determined

that a Force Majeure event has occurred, it being agreed that if the affected Party fails to notify the other Party within such timeframe, the affected Party shall not be entitled to relief as a result thereof until such time as the affected Party has remedied such failure and, in such case and subject to all limitations set forth in this Article 10, the affected Party shall only be entitled to relief for the period of time from and after the delivery of the applicable notice; (ii) within ten (10) Business Days after the Party has knowledge of the Force Majeure event, provide a written explanation of the Force Majeure event and its effect on the affected Party's performance and (iii) thereafter provide periodic written reports (no less often than weekly) on the status of the affected Party's efforts to remedy its inability to perform and a good faith estimate of when it will be able to resume performance, in each case to the extent known at the time of the report. If any Force Majeure event prevents or substantially prevents the delivery or receipt of the Charging Energy or the Discharged Energy for more than one hundred eighty (180) consecutive Days (or, if such prevention results from a Force Majeure event that requires the replacement of equipment that is not then readily available in the market on commercially reasonable terms which may, for example, include a site substation step-up transformer), such additional amount of time as may be reasonably needed to obtain and install equipment, but not to exceed an additional one hundred eighty (180) Days), the non-affected Party may terminate this Agreement upon notice to the other Party but such termination shall be without liability of either Party except on account of amounts accrued prior to the date of such termination. Each Party suffering a Force Majeure event shall take, or cause to be taken, such action as may be necessary to overcome or otherwise to mitigate, in all material respects, the effects of any Force Majeure event suffered by either of them and to provide written notice to the other Party of such actions, and to resume performance hereunder as soon as practicable under the circumstances. If the Service Provider is the affected Party for any event of Force Majeure that lasts for longer than twenty four (24) hours and Service Provider is substantially unable to deliver Discharged Energy or receive any Charging Energy, the Storage Payment shall be reduced on a pro rata basis to reflect any hours during which Service Provider is substantially unable to delivery Discharged Energy or receive any Charging Energy.

10.2 Force Majeure Defined.

(a) As used herein, "Force Majeure" shall mean any event or circumstance which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement and which by the exercise of reasonable 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, and (iii) 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.

(b) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:

(i) acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, theft, vandalism, public disorders, rebellion, violent demonstrations, revolution, sabotage or terrorist action;

(ii) any effect of unusually severe natural elements, such as fire, subsidence, earthquakes, floods, tornadoes, storms, lightning, or similar cataclysmic occurrence or other unusual natural calamities;

(iii) except as set forth in Section 10.2(c)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);

(iv) explosion or accident;

(v) governmental action or inaction;

(vi) emergencies (including but not limited to transmission load relief events and minimum generation emergencies) declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy or limiting the production of Energy, including Energy to be delivered pursuant to this Agreement; or

(vii) Impacts associated with any pandemic or epidemic, but only to the extent such impacts otherwise meet the definition of Force Majeure included herein.

(c) Force Majeure shall not be based on:

(i) Customer's or Service Provider's inability to obtain transmission service and the unavailability or interruption of transmission service (unless the unavailability or the interruption was the result of a System Emergency or otherwise caused by an occurrence that itself would qualify as a Force Majeure event);

(ii) Customer's inability economically to use or resell the Discharged Energy or the Attributes purchased hereunder;

(iii) Service Provider's inability to operate the Project economically notwithstanding the existence of this Agreement;

(iv) Service Provider's ability to sell the Discharged Energy or the Attributes at a price greater than the price set forth in this Agreement;

(v) Service Provider's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Customer pursuant to this Agreement;

(vi) a strike, work stoppage or labor dispute arising out of or limited only to any one or more of Service Provider, Service Provider's Affiliates, or any other third party employed by Service Provider to work on the Project;

(vii) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party; or

(viii) any breakdown or failure of equipment, unless the cause of such breakage or failure itself results from a Force Majeure Event.

ARTICLE 11 MISCELLANEOUS¹⁰

11.1 *Confidential Information.*

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Project, that they consider confidential and proprietary (the "Confidential Information"). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "Disclosing Party") may make such Confidential Information available to the other (each, a "Receiving Party") subject to the provisions of this Section 11.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as permitted hereunder or required by Applicable Law, subject to the restrictions set forth below.

(c) The restrictions of this Section 11.1 do not apply to:

¹⁰ **Note to Draft:** PSE reserves the right to include additional provisions relating to cyber security.

(i) Release of this Agreement or any part or summary hereof to any Governmental Authority required for obtaining any approval or making any filing pursuant to Section 4.2; provided, that (a) Service Provider agrees to cooperate in good faith with Customer to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law and (b) Service Provider shall provide reasonable notice to Customer, prior to disclosure (if not prevented by law), of the time and scope of the intended disclosure in order to provide Customer an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure;

(ii) Information which is, or becomes, publicly known or generally available to the public other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party prior to the date hereof;

(iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which the Receiving Party determines is required to be disclosed pursuant to Applicable Law; provided the Receiving Party shall provide reasonable notice to the Disclosing Party of the time and scope of the intended disclosure.

(d) Notwithstanding the foregoing, the Parties may provide any Confidential Information: (i) to a Transmission Provider as required for scheduling, settlement and billing, (ii) to any Person with review rights specified in other provisions of this Agreement and (iii) on a need-to-know basis to agents, trustees, employees, managers, officers, representatives, consultants, accountants, financial advisors, experts, legal counsel, other professional advisors to the Parties, their Affiliates, and prospective investors and Lenders to either Party, provided that in the case of clauses (ii) and (iii), such Persons have been advised of the confidential nature of the information and have agreed to maintain the confidentiality thereof using the same degree of care to protect the Confidential Information as the Receiving Party employs to protect its own information of like importance, but in no event less than a reasonable degree of care based on industry standards, and the Party providing Confidential Information to any such Person shall be responsible for the compliance with this Agreement by any such Person. If Confidential Information is the subject of a subpoena from a third party, the receiving Party may disclose such Confidential Information on the advice of its counsel in compliance with the subpoena, provided that the Disclosing Party shall provide notice thereof to the providing

Party and make reasonable efforts to afford the providing Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

(e) Notwithstanding anything to the contrary contained herein, Customer may disclose Confidential Information upon reasonable notice to Service Provider if Customer reasonably determines, based upon its status as a regulated public utility, that disclosure to a Governmental Authority is necessary or appropriate in connection with any submission or application to, or response from, any such authorities regarding the Project and this Agreement, the effect thereof on Customer's rates or investment return or similar matters, provided that Customer shall (A) endeavor to keep Service Provider informed with respect to such disclosures, (B) file a written request in the form of a motion for protective order or for confidential treatment or other comparable written request that any Confidential Information be afforded confidential treatment and otherwise endeavor to obtain confidential treatment of Confidential Information, and (C) notify Service Provider promptly if it receives notice of any challenge to the request that such Confidential Information be afforded confidential treatment.

(f) Neither Party shall issue any press or publicity release, other than information that is required to be distributed or disseminated pursuant to Applicable Law (provided that the Disclosing Party has given notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 11.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project, as are necessary in order to fulfill such Party's obligations under this Agreement.

(g) The obligations of the Parties under this Section 11.1 shall remain in full force and effect for two (2) years following the expiration or termination of this Agreement.

11.2 *Successors and Assigns; Assignment.*

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. In connection with any permitted assignment pursuant to this Section 11.2(a), among other things, (i) the assignee shall expressly assume all of the assignor's existing and future obligations under this Agreement (whether arising before or after such assignment) and (ii) the assignee shall agree in writing to be bound by the terms and conditions of this Agreement. In addition, with respect to any proposed assignment by Service Provider, Service Provider shall

deliver or cause to be delivered to Customer evidence reasonably satisfactory to Customer of the technical and financial capability of the proposed assignee, it being understood that for any proposed assignee or transferee, technical capability may be demonstrated by a showing that the assignee or transferee or its Affiliates have a minimum of three (3) years' experience in the energy storage and operation business, including owning, controlling or operating for at least three (3) years a minimum of five hundred (500) MW of energy storage capacity, or having a long-term contractual arrangement (not less than three (3) years in duration) with an operator for the Project meeting such requirements.

(b) If either Party wishes to assign, transfer, or otherwise convey its interest in this Agreement, it shall provide prior written notice of such proposed conveyance and information demonstrating the assignee or transferee meets the qualifications of Section 11.2(a) to the non-assigning Party, along with any other reasonably requested information. Within thirty (30) Days' receipt of notice of any proposed assignment, the non-assigning Party shall either consent or object to the proposed assignment, such consent not to be unreasonably withheld, provided that the assigning Party shall promptly provide any information on the proposed assignee or transferee requested by the non-assigning Party during such term.

(c) Notwithstanding the foregoing, either Party may, without the other's consent:

(i) transfer, sell, pledge, encumber, or assign this Agreement or the revenues or proceeds thereof in connection with any financing (including any tax equity financing); or

(ii) transfer or assign this Agreement to an Affiliate.

(d) In accordance with Section 11.2(c)(i), Service Provider shall be permitted to assign this Agreement to a debt Lender as collateral for any financing or refinancing of the Project. Customer will, at Service Provider's expense, execute customary consents to assignment of this Agreement in favor of any debt Lenders for collateral purposes as may be reasonably required by such Lenders, giving such Lenders "step-in" cure rights with respect to Events of Default, notices of such Events of Default, and such other rights as are customary in connection with the financing of projects similar to the Project. In addition, Customer will, at Service Provider's expense, execute customary estoppels in favor of Lenders providing tax equity financing. Notwithstanding the foregoing, (i) Customer will not be obligated to agree to any provisions that would adversely affect the rights or increase the duties of Customer under this Agreement in any material respect, including the extension of any cure periods or additional remedies for financing parties and (ii) Service Provider shall be responsible, at Customer's request, for Customer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including attorneys' fees.

(e) Customer acknowledges that upon an event of default under any financing documents relating to the Project, any of the debt Lenders may (but shall not be obligated to) assume, or cause its designee or a new lessee or Customer of the Project, to assume, all of the interests, rights and obligations of Service Provider thereafter arising under this Agreement; provided that such Lender, its designee or a new lessee or Customer must comply with the qualifications requirements set forth in Section 11.2(a).

(f) Except in connection with Section 11.2(c)(i) above, each Party shall cause any permitted assignee or transferee of such Party's interests in, to or under this Agreement to assume all existing and future obligations of such Party to be performed under this Agreement. Except with respect to assignments pursuant to Sections 11.2(c)(i) and (ii) above, upon any permitted assignment or transfer of this Agreement, the assigning or transferring Party shall be, without further action by either Party, released and discharged from all obligations under this Agreement arising after the effective date of such assignment or transfer.

(g) Service Provider shall be required to assign this Agreement to any Person that becomes the direct owner of all or substantially all of the assets comprising the Project concurrently with the transfer of the applicable assets. For the sake of clarity, the foregoing shall not relieve Service Provider of the restrictions on assignment of this Agreement contained in this Section 11.2, and therefore if consent to the necessary assignment is required, any proposed transfer of all or substantially all of the assets comprising the Project shall require the consent of Customer to the same extent and subject to the same terms and conditions as for the required assignment of this Agreement.

(h) Any transfer by either Party not expressly permitted under this Section 11.2 shall be null and void *ab initio* and of no force or effect and further shall be deemed to be an Event of Default hereunder.

11.3 *Change of Control of Service Provider.* A Change of Control with respect to Service Provider shall be considered an assignment of this Agreement to a third party and shall be subject to the various requirements set forth in Section 11.2 above.

11.4 *Financing Liens.*

(a) Service Provider, without approval of Customer, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project, and Service Provider's Interconnection Facilities (including any tax equity financing).

(b) Within ten (10) Business Days of making such encumbrance, Service Provider shall notify Customer in writing of the name, address, and telephone and facsimile numbers of each Lender to which Service Provider's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other

representatives of the Lenders to whom all written and telephonic communications may be addressed.

(c) After giving Customer such initial notice, Service Provider shall promptly give Customer notice of any change in the information provided in the initial notice or any revised notice.

11.5 Notices.

(a) All notices and communications required to be given pursuant to this Agreement shall be:

(i) in writing;

(ii) delivered by hand (against receipt), recorded courier or express service, or sent by electronic mail; provided, that any communications delivered by electronic mail shall be in a portable document format (PDF); and

(iii) delivered, sent or transmitted to the address for the recipient's communications as stated below; provided, that if the recipient gives the other Party notice of another address, communications shall thereafter be delivered accordingly, and if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

(b) Any such notice and communication shall be deemed to have been received by a Party as follows:

(i) if delivered by hand or delivered by courier or express service, at the time of delivery; or

(ii) if sent by electronic mail properly addressed and dispatched, upon transmission, if during the recipient's regular business hours, and otherwise, on the next Business Day, provided that in either case such notice shall not be effective unless a copy of such notice shall be sent by registered or certified mail, return receipt requested, postage prepaid.

(c) The addresses for notices shall be as follows:

If to Service Provider: []

[]

[]

Attn: []

Email: []

with a copy to:

[]

Attn: []

Email: []

If to Customer:

[]

[]

[]

Attn: []

Email: []

with a copy to:

[]

Attention: []

Email: []

11.6 Amendments. This Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

11.7 Records; Audit Rights.

(a) Service Provider shall maintain complete and accurate records of and supporting documentation for all charges under this Agreement and all other data and/or information created, generated, collected, processed or stored by Service Provider in its performance under this Agreement (“Contract Records”). Unless Customer instructs Service Provider to delete or destroy any Contract Records or requests the return of such Contract Records to Customer, Service Provider shall retain Contract Records for a period of at least six (6) years after the date of the performance or after termination of this Agreement (the “Retention Period”).

(b) Service Provider shall provide to Customer and its representatives through the Retention Period, access at reasonable hours to Service Provider personnel and facilities and to Contract Records and other pertinent information, all to the extent relevant to Service Provider’s performance under this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Late Payment Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

(c) Except as otherwise provided in this paragraph, each Party will be responsible for its own costs associated with any audit activity pursuant to this Section 11.7. If an audit reveals an overcharge of more than 10%, then Service Provider shall promptly reimburse Customer for the reasonable cost of the portion of such audit relating to the overcharge.

11.8 *Waivers.* Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

11.9 *Waiver of Certain Damages; Certain Acknowledgments.* NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT (EXCEPT TO THE EXTENT INDEMNIFICATION PAYMENTS ARE MADE PURSUANT TO SECTION 8.1 AS A RESULT OF AN INDEMNIFIED PERSON'S OBLIGATION TO PAY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES TO A THIRD PARTY (EXCLUDING EITHER PARTY'S AFFILIATES, LENDERS, OFFICERS, DIRECTORS, SHAREHOLDERS OR MEMBERS) AS A RESULT OF ACTIONS INCLUDED IN THE PROTECTION AFFORDED BY THE INDEMNIFICATION SET FORTH IN SECTION 8.1), NEITHER CUSTOMER NOR SERVICE PROVIDER (NOR ANY OF THEIR AFFILIATES, LENDERS, CONTRACTORS, CONSULTANTS, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR EMPLOYEES) SHALL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES UNDER, ARISING OUT OF, DUE TO, OR IN CONNECTION WITH ITS PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY OF ITS OBLIGATIONS HEREIN, WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, WARRANTY, INDEMNITY OR OTHERWISE, EXCEPT IN CASES OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED TO BE THE EXCLUSIVE REMEDY THEREFOR, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, EXCEPT IN CASES OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PARTIES ALSO AGREE THAT IN ALL CASES WHERE THIS AGREEMENT PROVIDES FOR LIQUIDATED DAMAGES, THE ACTUAL DAMAGES WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OBTAINING AN ADEQUATE REMEDY WOULD BE UNREASONABLY TIME CONSUMING AND EXPENSIVE, AND THEREFORE SUCH LIQUIDATED DAMAGES ARE A REASONABLE APPROXIMATION OF THE HARM AND NOT A PENALTY, AND IN NO EVENT SHALL SUCH LIQUIDATED DAMAGES BE CONSIDERED SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

11.10 *Survival.* Notwithstanding any provisions herein to the contrary, the obligations set forth in Article 8 and Sections 9.2, 11.1 and 11.5 through 11.27, shall survive (in full force) the expiration or termination of this Agreement. All other provisions of this Agreement that must survive the expiration or earlier termination of this Agreement in order to give full force and effect

to the intent of the Parties shall remain in effect and be enforceable following such expiration or termination to such extent.

11.11 Severability. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect, and that provision shall be severed from the remainder of the Agreement, and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible, or otherwise modified in such fashion as to preserve, to the maximum extent possible, the original intent of the Parties, and the Agreement, as so modified, shall continue to be in full force and effect; provided that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the intent of the Parties.

11.12 Standard of Review. The Parties specifically intend and acknowledge and agree that, except as otherwise expressly provided in this Agreement neither Party shall be permitted to make a filing with the FERC under any provision of the Federal Power Act or the regulations promulgated thereunder that seeks to amend or otherwise modify, or requests the FERC to amend or otherwise modify, any provision of this Agreement at any time during the Term, except to implement an amendment or other modification to this Agreement that has been reduced to writing and signed by authorized representatives of both Parties pursuant to Section 11.6. In addition, to the extent any third party or the FERC acting *sua sponte*, seeks to amend or otherwise modify, or requests the FERC to amend or otherwise modify, any provision of this Agreement, the standard of review shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine).

11.13 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington without regard to its conflicts of laws provisions.

11.14 Consent to Jurisdiction.

(a) Each of the Parties hereto hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement shall be brought exclusively in any of the courts of the United States of America located in the United States District Court for the Western District of Washington, having subject matter jurisdiction, or if such court lacks subject matter jurisdiction, then the state court for King County, Washington.

(b) By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby:

(i) Irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents;

(ii) Irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit,

action or proceedings with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceedings brought in any such court has been brought in any inconvenient forum;

(iii) Agrees that service of process in any such action may be effected by mailing a copy thereof by certified mail, return receipt requested, postage prepaid, to such Party its address(es) set forth in Section 11.5, or at such other address of which the other Parties hereto shall have been notified; and

(iv) Agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

11.15 *Waiver of Trial by Jury.* EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

11.16 *Disputes.* In the event of any good faith dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a “Dispute”), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within thirty (30) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within thirty (30) days after such referral to the senior management of the Parties, then either Party may pursue all of its remedies available in law or equity. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner, provided, however, that failure to resolve a Dispute shall not, standing alone, constitute a breach of this Agreement. Notwithstanding the existence of a Dispute, each Party shall fulfill its obligations in accordance with the terms hereof.

11.17 *Specific Performance.* The Parties agree that no adequate remedy at law exists for a breach or threatened breach of any of the provisions of this Agreement, the continuation of which unremedied will cause the aggrieved Party to suffer irreparable harm. Accordingly, the Parties agree that the Parties shall be entitled, in addition to other remedies that may be available to them, to immediate injunctive relief from any breach or threatened breach of any of the provisions of this Agreement and to specific performance of their rights hereunder, as well as to any other remedies available at law or in equity. This right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, the Parties would not have entered into this Agreement. The Parties agree that they will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the opposing Party has an adequate remedy at law or an award of specific performance is not an appropriate remedy for

any reason at law or in equity. The Parties shall not be required to provide any bond or other security in connection with any such order or injunction. The Parties also agree that (i) the seeking of any remedies pursuant to this Section 11.17 shall not in any way constitute a waiver of any right to seek any other form of relief that may be available under this Agreement.

11.18 *No Third-Party Beneficiaries.* Except as set forth in Article 8 and in Sections 11.2, 11.3 and 11.9, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

11.19 *No Agency.* This Agreement is not intended, and shall not 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. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

11.20 *Disclaimer.* Other than the right and obligation to buy Storage Services and Attributes from Service Provider in accordance with the provisions of this Agreement, this Agreement shall not be interpreted to create any ownership or proprietary rights in the Project in favor of Customer, and Customer hereby disclaims, any right, title or interest in any part of the Project.

11.21 *Further Assurances.* Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 11.20.

11.22 *Good Faith.* The Parties shall act in accordance with principles of good faith and fair dealing in the performance of this Agreement.

11.23 *Forward Contract.* Each Party acknowledges and agrees that: (i) the transactions contemplated under this Agreement constitute “forward contracts” within the meaning of Title 11 of the United States Code (the “Bankruptcy Code”); (ii) Customer is a “forward contract merchant” within the meaning of the Bankruptcy Code; and (iii) Customer’s rights under Section 9.2 of this Agreement constitute “contractual rights to liquidate” the transactions within the meaning of the Bankruptcy Code. Each Party acknowledges and agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in Section 366 of the Bankruptcy Code, and each Party agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding involving a Party. In any such proceeding, each Party further agrees to waive the right to assert that the other Party is a provider of last resort.

11.24 *Separation of Functions.* Service Provider hereby acknowledges that (i) Customer is acting solely in its capacity as a local distribution company, (ii) the activities of Customer as

Transmission Provider are outside the scope of this Agreement, and (iii) Customer shall not have any liabilities or obligations hereunder arising out of any actions or inactions of Customer acting in its role as Transmission Provider.

11.25 Captions; Construction. All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

11.26 Entire Agreement. This Agreement supersedes all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

11.27 Counterparts; Electronic Delivery. This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other similar transmission method, and any counterpart so delivered shall be deemed to have been duly and validly executed and delivered and be valid and effective for all purposes.

[Signature Page Follows]

Confidential

IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.

[]

By: _____

Name: []

Title: []

Puget Sound Energy, Inc.

By: _____

Name: []

Title: []

ANNEX I

“Affiliate” shall mean, with respect to any Person, (i) each Person that directly or indirectly, Controls such designated Person; (ii) any Person that directly or indirectly owns, controls, or holds with power to vote fifty percent (50%) or more of any class of voting securities of such designated Person or fifty percent (50%) or more of the equity interest in such designated Person; (iii) any Person of which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interest or (iv) any Person that is under common control with such designated Person.

“Agreement” shall have the meaning set forth in the first paragraph hereof.

“Ancillary Services” shall mean those services which can be provided to or by the Project in addition to capacity and Energy, and which are described as “ancillary services” under any applicable OATT. For avoidance of doubt, the Ancillary Services do not include black start.

“Applicable Law” shall mean, with respect to any Person or the Project, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, tariffs, regulations, Governmental Approvals, licenses and permits, directives and requirements of all regulatory and other governmental authorities as may be amended, in each case applicable to or binding upon such Person or the Project (as the case may be), including the standards and criteria of the North American Electric Reliability Corporation, FERC, and WECC.

“Attributes” shall mean any and all Capacity Attributes and Storage Attributes. Notwithstanding anything to the contrary in this Agreement, for purposes of this Agreement no Incentive is an Attribute.

“Augmentation Outage” means an Outage that is not a Forced Outage or a Planned Outage and refers to the shutdown or unavailability of all or a portion of the Project for the purpose of a battery augmentation project.

“Availability Adjustment” means, for each month during the Term, the result of the following equation for such month: (a) 100%, *minus* (b) (i) Guaranteed Storage Availability *minus* (ii) Storage Availability for such month; provided, however, that if the Storage Availability for such month is equal to or greater than the Guaranteed Storage Availability, then the Availability Adjustment for such month shall be equal to 100%.

“Balancing Authority” shall have the meaning set forth in the NERC Glossary of Terms and shall be designated by Service Provider from time to time in its sole discretion. The Balancing Authority in which the Project will participate initially will be [____].

“Banked Cycles” is the number of cycles or partial cycles Customer does not utilize in a contract year. The Banked Cycles for a contract year shall be calculated by taking a) the Maximum

Annual Throughput minus b) the Actual Annual Throughput and dividing by c) the Guaranteed Storage Capacity.

“Bankruptcy Code” shall have the meaning set forth in Section 11.23.

“Battery Commitment Date” shall mean the date on which Service Provider shall have irrevocably committed to the purchase of all of the Battery equipment for the Project, as evidenced by Service Provider furnishing to Customer a certificate from a duly authorized representative of Service Provider attesting to the entry into of a binding written contract therefor that includes either (i) the payment by Service Provider of a non-refundable deposit in cash in an amount equal to or greater than five percent (5%) of the total purchase price therefor; or (ii) a liquidated damages payment in an amount equal to or greater than five percent (5%) of the total purchase price therefor in the event of an early termination or cancelation of such binding written contract, secured by either (A) a letter of credit or (B) a parent guaranty from an Affiliate of Service Provider.

“BESS Controller” means a device used to regulate and control the networked inverters, batteries, and Project equipment in order to meet specified setpoints and modulate grid parameters at the Interconnection Point.

[“BPA” shall mean the Bonneville Power Administration.]

“Business Day” shall mean every day other than a Saturday or Sunday or any other day on which banks in the States of Washington are permitted or required to remain closed.

“CAISO” shall mean the California Independent System Operator.

“Capacity Adjustment” shall have the meaning set forth in Section 2.1(d).

“Capacity Attributes” shall mean any and all present or future (known or unknown) defined characteristics, certificates, tags, credits, or Ancillary Service attributes, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to store Energy or produce Ancillary Services, including those in respect of the WRAP Program.

“Capacity Ratio” means the ratio of the Effective Capacity divided by the Contract Capacity.

“CCA” means the state of Washington’s Climate Commitment Act.

“CEIP” shall have the meaning set forth in Section 7.5(b).

“Change of Control” shall mean, with respect to any Person, the occurrence of any one of the following with respect to such Person: (i) the consolidation with or merger into any other Person by such Person or by any other Person, or (ii) a direct or indirect assignment, conveyance,

transfer, lease, exchange, conversion or other disposition of the equity interests in such Person or any other Person, or in either case the voting rights with respect thereto; in either case, as a result of which the Person or Persons that, prior to the occurrence of the foregoing, Control, directly or indirectly, such Person shall cease to, directly or indirectly, Control such Person; provided, however, that (i) any Change of Control of Service Provider's Ultimate Parent Company, and (ii) the direct or indirect transfer of shares of, or equity interests in, Service Provider to a tax equity investor, shall in each case not be deemed to constitute a Change of Control with respect to Service Provider.

"Charging Energy" means Energy delivered to the Project at the Interconnection Point in accordance with a Charging Notice, as measured by Service Provider's Primary Meter. For the avoidance of doubt, Charging Energy shall include all energy stored by the Project and discharged at a later time, as well as energy associated with efficiency losses, but expressly excludes Station Service energy.

"Charging Notice" means the operating instruction, including Generator Set-Point, and any subsequent updates, given by Customer to Service Provider, directing delivery of Charging Energy to the Project to charge at a specific MW rate to a specified Stored Energy Level. The Charging Notice shall specify: (i) the period of time in which Service Provider shall charge the Project; and (ii) the Stored Energy Level that Service Provider shall charge the Project to by the end of the specified time in the Charging Notice.

"Claim Notice" shall have the meaning set forth in Section 8.1(d).

"Code" means the Internal Revenue Code of 1986, as the same may be amended from time to time, including any amendments or any substitute or successor provisions thereto.

"Commercial Operation" shall mean, with respect to any battery, that the following conditions have been fulfilled: (i) the battery is able to store electricity consistent with the specifications of the battery manufacturer; (ii) the battery has been satisfactorily tested and commissioned, as evidenced by a certificate from the Independent Engineer; (iii) all related facilities (including the equipment and capability of the Project to receive Generator Set-Points) and rights have been completed or obtained, so as to allow for normal and continuous operation of such battery and the provision of the Storage Services for the benefit of Customer pursuant to this Agreement.

"Commercial Operation Date" shall mean, with respect to the Project, that: (i) the Contract Capacity determined in accordance with Exhibit G is not less than ninety-seven percent (97%) of the Planned Nameplate Capacity of the Project, and is capable of receipt of Charging Energy at the Interconnection Point, charging and storing Energy, and delivery of Discharged Energy and otherwise providing Attributes to the Interconnection Point pursuant to the terms of this Agreement; (ii) the Project has been fully tested and commissioned and all related facilities and rights have been completed or obtained to allow for normal and continuous operation of the Project

at the Contract Capacity; (iii) Service Provider shall have satisfied the requirements set forth in the Commercial Operation Certificate in the form attached as Exhibit E with respect to the Project; (iv) Service Provider shall have delivered the true, correct, and complete Commercial Operation Certificate from Service Provider and the Independent Engineer; and (v) Service Provider shall have received all local, state, and federal Governmental Approvals and other approvals as may be required by Applicable Law for the construction, operation, and maintenance of the Project.

“Confidential Information” shall have the meaning set forth in Section 11.1.

“Construction Start Date” shall mean the date on which Service Provider has issued a full notice to proceed to the Contractor directing Contractor to commence all or substantially all of the work comprising the Project without condition or delay.

“Contract Capacity” means the initial Effective Capacity of the Project as determined pursuant to the Performance Test conducted in accordance with Exhibit G as part of the requirements for the achievement of the Commercial Operation of the Project, but subject to increase if and to the extent that Service Provider effects a cure of a capacity shortfall as contemplated by Section 4.4(f) and as evidenced by a Performance Test conducted in accordance with Exhibit G; provided, however, that in no event shall the Contract Capacity exceed the Planned Nameplate Capacity.

“Contract Price” shall mean \$[] per kW-month.

“Contract Records” shall have the meaning set forth in Section 11.7.

“Contract Year” shall mean each year during the Term, whether such year is comprised of 365 or 366 Days, commencing at 00:00 Pacific Prevailing Time on the Commercial Operation Date and ending at 24:00 Pacific Prevailing Time on the day before the first anniversary of the Commercial Operation Date, and each anniversary thereof, or, in the case of the last Contract Year, the expiration of the Initial Term or Renewal Term, as applicable.

“Contractor” shall mean the engineering, procurement and construction contractor selected by Service Provider to design, build, and construct the Project.

“Control” of a Person, means the possession, directly or indirectly through one or more intermediaries, of (a) a voting interest of more than fifty percent (50%) in such Person, or (b) the power to either (i) elect a majority of the directors (or Persons with equivalent management power) of such Person, or (ii) direct or cause the direction of the management or policies of such Person, whether through the ownership of securities or partnership, membership or other ownership interests, by contract, by operation of law or otherwise.

“Credit Rating” means, with respect to any entity, the corporate credit or issuer 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 an issuer rating by the S&P, Moody's and/or Fitch.

"Credit Support" shall mean (a) prior to the Commercial Operation Date a letter of credit in the form of Exhibit D hereto from a Creditworthy Bank and otherwise satisfying the requirements of Article 5 and (b) as of the Commercial Operations Date (i) a Guaranty, (ii) cash or (iii) a letter of credit in the form of Exhibit D hereto from a Creditworthy Bank and otherwise satisfying the requirements of Article 5.

"Creditworthy Bank" shall mean a U.S. state or federally chartered commercial bank (or U.S. branch of a foreign commercial bank) which has (i) assets of at least \$10,000,000,000 and (ii) senior unsecured long-term debt or deposits that, at the time when the letter of credit is delivered, are rated at least "A-" (or its current equivalent) by S&P or Fitch and at least "A3" (or its then current equivalent) by Moody's.

"Customer" shall have the meaning set forth in the first paragraph of this Agreement.

"Customer's Check Meters" shall have the meaning set forth in Section 6.1(c).

"Day" or "day" shall mean a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 24:00 hours Pacific Prevailing Time on the same calendar day.

"Defaulting Party" shall have the meaning set forth in Section 9.2.

"Discharge Spread" shall mean one hundred thirty percent (130%) *multiplied by* the Proxy Energy Price. For sake of clarity, if the foregoing calculation results in a negative Discharge Spread for any period of determination, the Discharge Spread for such period shall be deemed to be \$0.

"Discharge Spread Adjustment" shall have the meaning set forth in Section 2.1(d)(ii).

"Discharged Energy" shall mean all Energy delivered to Customer by Service Provider pursuant to a Discharging Notice at the Interconnection Point in accordance with this Agreement.

"Discharging Notice" means the operating instruction, including Generator Set-Points, and any subsequent updates, given by Customer to Service Provider, directing the Project to discharge Discharged Energy at a specific MW rate to a specified Stored Energy Level. The Discharging Notice shall specify: (i) the period of time in which Service Provider shall discharge the Project; and (ii) the Stored Energy Level that Service Provider shall discharge the Project to by the end of the specified time in the Discharging Notice. For the avoidance of doubt, any Customer request to initiate a Performance Test shall not be considered a Discharging Notice.

"Disclosing Party" shall have the meaning set forth in Section 11.1(a).

“Dispatch Instruction” means either a Charging Notice or Discharging Notice.

“Dispute” shall have the meaning set forth in Section 11.16.

“Early Termination Date” shall have the meaning set forth in Section 9.2(a)(i).

“Effective Capacity” means the maximum power value at which the Project can continuously discharge Energy for four (4) hours, as measured in MW AC at the Interconnection Point and determined pursuant to the most recent Performance Test.

“Effective Date” shall have the meaning set forth on the first page of this Agreement.

“Energy” shall mean electric energy in the form of three (3) phase, sixty (60) Hertz, alternating current.

“Energy Imbalance Market” shall mean the California Independent System Operator’s Western Energy Imbalance Market.

“Event of Default” shall have the meaning set forth in Section 9.1.

“Excess Charging Energy” shall have the meaning set forth in Section 2.10(c).

“Exclusivity Period” shall have the meaning set forth in Section 3.4.

“Excused Energy” shall mean the quantity of Energy that is not dispatched due to a Service Provider Excuse.

“Federal Power Act” shall mean the Federal Power Act of 1935, 16 U.S.C. § 791a, et seq.

“FERC” shall mean the Federal Energy Regulatory Commission or any successor government agency.

“First Offer” shall have the meaning set forth in Section 4.5(f).

“Fitch” means Fitch Ratings, Ltd., or its successor, or, in the event that there is no such successor, a nationally-recognized credit rating agency.

“Force Majeure” shall have the meaning set forth in Section 10.2.

“Forced Outage” shall mean an Outage of the Project, or a portion thereof, other than as a Planned Outage or an Augmentation Outage. A Forced Outage shall not include an Outage that may be deferred to a Planned Outage or Augmentation Outage consistent with Prudent Operating Practices and without causing or the reasonable likelihood of causing safety risk, damage to equipment or additional costs.

“Generator Set-Point” means an analog or digital signal updated every [four (4) seconds] sent to the Project by Customer, the Balancing Authority or the Transmission Provider with respect to the Project operations.

“Governmental Approvals” shall have the meaning set forth in Section 4.2.

“Governmental Authority” shall mean any federal, state, local or municipal government, governmental department, city council, public power authority, public utility district, joint action agency, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question, including the North American Electric Reliability Corporation, FERC, and any regional transmission organization.

“Guaranteed Battery Commitment Date” shall have the meaning set forth on Exhibit F.

“Guaranteed Commercial Operation Date” shall mean [____], 20[____], as may be extended in accordance with the Terms of this Agreement.

“Guaranteed Construction Start Date” shall mean [____], 20[____], as may be extended in accordance with the Terms of this Agreement.

“Guaranteed Roundtrip Efficiency” shall have the meaning set forth in Exhibit G.

“Guaranteed Storage Availability” shall have the meaning set forth in Exhibit G.

“Guaranty” means a guaranty in the form of Exhibit C hereto from an Affiliate with an Investment Grade Credit Rating or as otherwise permitted by Article 5.

“HB 1589” shall have the meaning set forth in Section 7.4(b).

“Incentives” shall mean (i) any and all present or future (whether known or unknown) local, state, and federal production tax credits, investment tax credits and any other tax credits or benefits which are or will be generated by the Project and/or the provision of the Storage Services, and (ii) present or future (whether known or unknown) cash payments, alternative digital currencies or cryptocurrencies provided or made available by non-governmental entities to the Project, or outright grants of money relating in any way to the Project.

“Indemnified Party” shall have the meaning set forth in Section 8.1(d).

“Indemnifying Party” shall have the meaning set forth in Section 8.1(d).

“Independent Engineer” shall mean a licensed and registered professional engineering consulting firm selected by Service Provider from one or more of the following: *[insert list of acceptable firms]*; or any other such firm selected by Service Provider subject to approval in advance by Customer (not to be unreasonably withheld).

“Independent Valuator” shall mean, as mutually agreed by the Parties, any independent internationally recognized investment bank, accounting firm or other recognized professional services firm that is regularly engaged in providing valuations of power projects comparable to the Project.

“Initial Term” shall have the meaning set forth in Section 3.2.

“Interconnection Agreement” shall mean the Generator Interconnection Agreement to be entered into by and between Service Provider and Transmission Provider with respect to the Project, as amended from time to time.

“Interconnection Point” shall mean the point at which the Project interconnects with the Transmission Provider’s Transmission System as set forth in the Interconnection Agreement.

“Investment Grade Credit Rating” shall mean a Credit Rating by at least two Ratings Agencies equal to or better than “BBB-” by S&P, “Baa3” by Moody’s or “BBB-” by Fitch.

“Late Payment Rate” shall have the meaning set forth in Section 2.5(d).

“Lender” or “Lenders” shall mean any and all Persons or successors in interest thereof lending money, extending credit, or providing tax equity to Service Provider to finance the development, construction, ownership and/or operation of the Project, including any refinancing(s) of such indebtedness.

“Material Governmental Approvals” shall mean the Governmental Approvals listed on Exhibit J.

“Material Permits” shall mean the permits listed on Exhibit J.

“Market Value” shall mean, (a) where the Defaulting Party is Customer, the excess, if any, of (i) the present value as of the Early Termination Date of payments that would have been made under this Agreement for the period from the Early Termination Date to the scheduled expiration of the Term, less (ii) the present value as of the Early Termination Date of payments that are to be made under a Replacement Contract (whether or not actually entered into by Service Provider) during its term and (b) where the Defaulting Party is Service Provider, the excess, if any, of (i) the present value as of the Early Termination Date of payments that are to be made under a Replacement Contract (whether or not actually entered into by Customer) during its term, less (ii) the present value as of the Early Termination Date of payments that would have been made under this Agreement for the period from the Early Termination Date to the then scheduled expiration of the Term.

“Meter” shall mean a settlement quality, utility grade instrument and associated equipment meeting applicable electric industry standards as established by CAISO for SQMD, National Electrical Manufacturers Association and American National Standards Institute and used to

measure and record the quantity and the required delivery characteristics of Energy delivered hereunder. Metering equipment must meet requirements for the most recent version of the CAISO Business Practice Manual for Metering as it relates to the creation of SQMD.

“Metered Energy” shall mean the Charging Energy and the Discharged Energy.

“Milestones” shall have the meaning set forth in Section 4.4.

“Moody’s” shall mean Moody’s Investor Service, Inc. rating group, or its successor.

“Monthly CONE” shall mean (i) the “Annual CONE” published by Western Power Pool each year as part of WRAP Program, which is \$[] per kW-year as of the Effective Date, divided by, (ii) twelve (12).

“MW” shall mean a megawatt of capacity.

“MWh” shall mean a megawatt-hour of Energy (rounded to the third decimal point).

“Network Resource Interconnection Service” shall have the meaning set forth in the OATT.

“Non-Defaulting Party” shall have the meaning set forth in Section 9.2.

“OATT” shall mean a Transmission Provider’s FERC-approved open access transmission tariff [(or in the case of BPA, its equivalent tariff)].

“Operating Procedures” shall have the meaning set forth in Section 2.9(b).

“Operating Parameters” shall have the meaning set forth in Exhibit B.

“Option” shall have the meaning set forth in Section 3.5(a).

“Outage” means any period where the capacity of the Project is unavailable for any reason.

“Outside Capacity Date” shall have the meaning set forth in Section 4.4(f).

“Pacific Prevailing Time” or “PPT” shall mean the prevailing time in the eighth time zone west of Greenwich Mean Time.

“Parties” shall have the meaning set forth in the first paragraph of this Agreement.

“Party” shall have the meaning set forth in the first paragraph of this Agreement.

“Performance Guarantee” shall have the meaning set forth in Section 2.11.

“Performance Test” shall have the meaning set forth in Exhibit G.

“Person” shall mean an individual, partnership, corporation, business trust, joint-stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company or any other entity of whatever nature.

“Planned Nameplate Capacity” shall mean [____].

“Planned Outage” shall mean the removal of equipment from service availability for inspection, maintenance and/or general overhaul of one or more pieces of equipment or equipment groups that affects the Storage Services.

“Pre-COD Termination Payment” shall have the meaning set forth in Section 4.5(d).

“Pre-Commercial Operation Date Credit Support” shall have the meaning set forth in Section 5.1(a).

“Prevailing Wage and Apprenticeship Requirements” means the requirements under Code Sections 45(b)(7) and (8), Code Sections 45Y(g)(9) and (10), Code Sections 48(a)(10) and (11), and Code Sections 48E(d)(3) and (4) and any PWA Guidance.

“Prime Rate” shall mean the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason, the “Prime Rate” shall mean a successor rate of interest per annum mutually agreed to as between Customer and Service Provider.

“Project” shall mean the battery to be located at the Site, including necessary ancillary electrical, metering, and control equipment, Service Provider’s Interconnection Facilities and any and all additions, replacements or modifications hereto. The final design and specifications of the Project will be chosen from the configurations set forth in Exhibit A hereto pursuant to the terms of Section 4.3(a) hereof. For the sake of clarity, the specific battery included within the Project shall be specified on Exhibit A hereto, and shall be separate and apart from any other energy storage development projects that Service Provider may develop adjacent to the Site.

“Project Assets” shall have the meaning set forth in Section 3.5(a).

“Proxy Energy Price” shall have the meaning set forth in Section 2.1(c).

“Prudent Operating Practices” shall mean the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for energy storage facilities in the U.S. of similar size, type, and design, that,

in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and reasonable standards of economy and expedition.

“PWA Guidance” means IRS Notice 2022-61, 2022-52 I.R.B 560 (Nov. 30, 2022), as may be modified or supplemented, proposed Treasury regulations under REG–100908–23, RIN 1545-BQ54 (August 30, 2023), and any other regulations or additional guidance on the requirements under Code Sections 45(b)(7) and (8), Code Sections 45Y(g)(9) and (10), Code Sections 48(a)(10) and (11), and Code Sections 48E(d)(3) and (4).

“Receiving Party” shall have the meaning set forth in Section 11.1(a).

“Remedial Action Plan” shall have the meaning set forth in Section 4.4(a)(ii).

“Renewal Term” shall have the meaning set forth in Section 3.3.

“Replacement Contract” shall mean a contract for the purchase and sale of capacity from an energy storage facility that (i) is entered into with a counterparty that has the same or similar creditworthiness as the Defaulting Party hereunder as of the Effective Date (or a counterparty whose obligations under the Replacement Contract are guaranteed by an entity with such creditworthiness), (ii) has a term substantially the same as the remaining unexpired portion of the Term, (iii) provides for the Attributes associated with the production of the energy to be transferred to the energy Customer under such contract, and (iv) has an output Interconnection Point that is the same as or substantially similar to the Interconnection Point hereunder, it being understood that commercially reasonable adjustments to the price under such contract shall be made to take into account, among other possible commercially material differences, differences due to length of term, capacity factors, Attributes and the location of the Interconnection Point under the Replacement Contract compared to the Interconnection Point hereunder.

“Retention Period” shall have the meaning set forth in Section 11.7(a).

“Roundtrip Efficiency” shall mean the amount of Discharged Energy relative to the amount of Charging Energy within a single charge and discharge cycle of the Project, as calculated pursuant to Exhibit G.

“S&P” shall mean Standard & Poor’s rating group (a division of McGraw-Hill, Inc.), or its successor.

“Service Provider” shall have the meaning set forth in the first paragraph of this Agreement.

“Service Provider Credit Event” shall be deemed to have occurred if at any time Service Provider fails to satisfy its credit support obligations of Section 5.1 hereunder, which may include (i) a failure by Service Provider or, if applicable, its guarantor, to maintain an Investment Grade

Credit Rating, or (ii) if a bank issuing a letter of credit as Credit Support hereunder ceases to be a “Creditworthy Bank.” For purposes of this definition, a Service Provider Credit Event shall not be deemed to have occurred with respect to a letter of credit if Customer has drawn the full amount of such letter of credit pursuant to the draw conditions set forth in Section 5.4.

“Service Provider’s Check Meters” shall have the meaning set forth in Section 6.1(a)(iv).

“Service Provider’s Designated Check Meter” shall mean Service Provider’s Check Meter, as adjusted to reflect the Energy delivered to the Interconnection Point, designated from time to time by Service Provider to act as a backup Meter pursuant to Section 6.2.

“Service Provider Excuse” means any reduction in the capacity of the Project (or the ability of the battery to charge or discharge) arising from (a) a Force Majeure, (b) a curtailment of the Project ordered by the Transmission Provider or (c) an act or omission of Customer.

“Service Provider’s Interconnection Facilities” shall mean the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Transmission Provider’s Transmission System up to, and on Service Provider’s side of, the Interconnection Point.

“Service Provider’s Primary Meter” shall mean the Meter installed to reflect the Energy delivered to the Interconnection Point.

“Sharing Calculation” means the calculation used to identify capacity surpluses or deficits in a “Sharing Event” under the WRAP Program.

“Sharing Event Hour” means an hour where a “Sharing Event” under the WRAP Program has occurred.

“Sharing Event Liquidated Damages” has the meaning set forth in Section 2.1(e).

“Site” shall mean the real property on which the Project is to be built and located, as further described in Exhibit A.

“SQMD” shall mean Settlement Quality Meter Data.

“Station Service” means, during periods in which the battery is idle (i.e. during periods in which the Project is not charging or discharging pursuant to a Charging Notice or Discharging Notice) the electric energy that is used within the Project to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Project (or as otherwise defined by the retail energy provider). Service Provider is solely responsible for Station Service.

“Storage Availability” shall have the meaning set forth on Exhibit G.

“Storage Attributes” shall mean any and all present or future (known or unknown) attributes associated with the capability of the Project to store Energy or produce Ancillary Services, including but not limited to current or future credits, credit privileges, emissions reductions, offsets, allowances, registrations, recordations, memorializations and other benefits, rights, powers or privileges, however denominated, including as such may be provided for in any currently existing or subsequently enacted Applicable Law attributable to the Project or the Energy that Customer stores with Service Provider hereunder, other than Capacity Attributes. Examples of Storage Attributes include, but are not limited to: incentives from the CCA, the avoidance of the emission of any gas, chemical, pollutant, or other substance into the air, soil or water, or the reduction, displacement or offset of emissions resulting from fuel combustion at another location pursuant to any federal, state or local legislation or regulation addressing “greenhouse gases” or similar emissions, set-aside allowances and/or allocations from emissions trading programs, as well as environmental or renewable energy credit trading program or any similar program now existing or hereafter developed under federal, state, local or foreign legislation or regulation or by any independent certification board or group generally recognized in the electric power industry. Storage Attributes include all rights to report ownership of any of the foregoing to any entity, organization, governmental body, or otherwise at Customer’s sole discretion.

“Storage Payment” shall have the meaning set forth in Section 2.1(b).

“Storage Services” shall mean the provision of the services by Service Provider under this Agreement, including those services set forth as “Allowed Use Cases” in Exhibit B and subject to Prudent Operating Practices.

“Stored Energy Level” means, at a particular time, the amount of electric energy stored in the Project, expressed in MWh.

“Summer Months” means June, July, August or September.

“System Emergency” shall mean an “Emergency Condition” (as defined in a Transmission Provider’s OATT).

“Term” shall have the meaning set forth in Section 3.1.

“Termination Payment” shall have the meaning set forth in Section 9.3(a).

“Transmission Provider” shall mean an entity (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity under this Agreement anywhere from source to sink (including via a pseudo-tie), and provides service under a tariff, or a regulatory body that regulates such entity. For the avoidance of doubt, “Transmission Provider” includes Puget Sound Energy, Inc. (solely in its capacity as operator of a transmission system).

“Transmission Provider’s Transmission System” shall mean the facilities for the transmission of Energy to and from the Interconnection Point.

“Ultimate Parent” means, with respect to any Person, the Person that Controls such first Person but is not itself Controlled by any other Person.

“WAC 296-140” has the meaning given to it in Section 7.4.

“Washington State and Local Sales and Use Taxes” means Washington state and local retail sales and use taxes (including Washington State Retail Sales Taxes) imposed pursuant to RCW 82.08, RCW 82.12 or RCW 82.14, if any, and other substantially similar sales and use taxes imposed under Washington state or local law (including, by reason of a change in Applicable Law) which, for purposes of clarity, the Parties specifically agree shall not include any business and occupation taxes.

“WECC” shall mean the Western Electricity Coordinating Council.

“Winter Months” shall mean November, December, January and February.

“WRAP Program” shall mean the Western Resource Adequacy Program administered by the Western Power Pool.

EXHIBIT A

DESCRIPTION OF THE PROJECT

Project Name:

Target Capacity:

Owner:

Location:

Operator:

Description of the Site:

Description of Equipment:

Battery Modules

Battery Management System:

Inverters:

Main Power Transformer:

Map

[See attached]

EXHIBIT B

Storage Services and Operating Parameters

The Guaranteed Power Capacity, Guaranteed Storage Capacity, Maximum Charge Capacity, Maximum Discharge Capacity and Annual Throughput should be updated after any Performance Test with the appropriate values. As it relates to these figures, for the day-to-day operation of the Project, if the real-time SCADA feed differs from the figures in the Operating Parameter table below, the real-time operating conditions from the SCADA feed shall be relied upon.

Operating Parameter	Values
Charging Source	[]
Allowed Use Cases	[]
Design Power Factor at POI	[]
Guaranteed Power Capacity	[]
Guaranteed Storage Capacity	[]
Maximum Charge Capacity	[]
Maximum Discharge Capacity	[]
Ramp Rate	[]
Response Time	[]
Operational SOC Limits	[0-100%]
Maximum Annual Average SOC	[70%]
Operational Temperature Limits	[-13F – 110F]
Cycles per Year without Banking	[]
Cycles per Day	[]
Maximum Annual Throughput ¹¹	[]
Bankable Cycles	[]
Maximum Cycles per Year including Banked Cycles	[]

¹¹ Note to Draft: Cycles per Year without Banking x Maximum Power Capacity.

EXHIBIT C

FORM OF SERVICE PROVIDER'S GUARANTY

THIS GUARANTY, dated as of ____ 20__, is issued by [____], a [____], ("Guarantor") in favor of [Puget Sound Energy, Inc., a Washington corporation] ("Guaranteed Party"). [____] LLC, an [____] limited liability company, ("Obligor") is an indirect subsidiary of Guarantor.

RECITALS

A. Obligor and Guaranteed Party have entered into a Energy Storage Agreement dated as of [____], 20[____] (the "Agreement").

B. This Guaranty is delivered to Guaranteed Party by Guarantor pursuant to the Agreement.

AGREEMENT

1. Guaranty of Obligations Under the Agreement.

(a) For value received, Guarantor hereby absolutely, unconditionally and irrevocably, subject to the express terms hereof, guarantees the full payment when due of all payment obligations and performance of any and all obligations, whether now in existence or hereafter arising, by Obligor to Guaranteed Party pursuant to the Agreement (the "Obligations"). This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all such Obligations may be or become discharged or uncollectible in any bankruptcy, insolvency or other similar proceeding, or otherwise unenforceable.

(b) **Maximum Guaranteed Amount.** Notwithstanding anything to the contrary herein, Guarantor's aggregate obligation to Guaranteed Party hereunder is limited to [____] U.S. Dollars (\$[____]) (the "Maximum Guaranteed Amount") (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to the Guaranteed Party, pursuant to a demand made upon Guarantor by Guaranteed Party or otherwise made by Guarantor pursuant to its obligations under this Guaranty including any indemnification obligations, shall reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis) and shall not either individually or in the aggregate be greater or different in character or extent than the obligations of Obligor to Guaranteed Party under the terms of the Agreement. IN NO EVENT SHALL GUARANTOR BE SUBJECT TO ANY CONSEQUENTIAL, EXEMPLARY, EQUITABLE, LOSS OF PROFITS, PUNITIVE, TORT OR OTHER SIMILAR DAMAGES UNLESS OBLIGOR IS OBLIGATED THEREFORE PURSUANT TO THE AGREEMENT.

2. **Payment; Currency.** All sums payable by Guarantor hereunder shall be made in freely transferable and immediately available funds and shall be made in the currency in which the Obligations were due. If Obligor fails to pay any Obligation when due, the Guarantor will pay that Obligation directly to Guaranteed Party within twenty (20) days after written notice to

Guarantor by Guaranteed Party. The written notice shall provide a reasonable description of the amount of the Obligation and explanation of why such amount is due.

3. Waiver of Defenses. Except as set forth above, Guarantor hereby waives notice of acceptance of this Guaranty and of the Obligations and any action taken with regard thereto, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of the Obligations, suit, or the taking of and failing to take other action by Guaranteed Party against Obligor, Guarantor or others and waives any defense of a surety. Without limitation, Guaranteed Party may at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (a) make any change to the terms of the Obligations; (b) take or fail to take any action of any kind in respect of any security for the Obligations; (c) exercise or refrain from exercising any rights against Obligor or others in respect of the Obligations or (d) compromise or subordinate the Obligations, including any security therefor. Notwithstanding the foregoing, Guarantor shall be entitled to assert rights, setoffs, counterclaims and other defenses which Obligor may have to performance of any of the Obligations and also shall be entitled to assert rights, setoffs, counterclaims and other defenses that the Guarantor may have against the Guaranteed party, other than defenses based upon lack of authority of Obligor to enter into and/or perform its obligations under the Agreement or any insolvency, bankruptcy, reorganization, arrangement, composition, liquidation, dissolution or similar proceeding with respect to Obligor.

4. Term. This Guaranty shall continue in full force and effect until the date that is twelve (12) months after the end of the Term; provided, however, that if at such time there exist any pending claims against Obligor under this Guaranty, this Guaranty shall remain in full force and effect until such claims have been satisfied in full. Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise.

5. Subrogation. Until all Obligations are indefeasibly performed in full, but subject to Section 6 hereof, Guarantor hereby waives all rights of subrogation, reimbursement, contribution and indemnity from Obligor with respect to this Guaranty and any collateral held therefor, and Guarantor hereby subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations.

6. Expenses. Guarantor agrees to reimburse Guaranteed Party on written demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Guaranteed Party in enforcing its rights under this Guaranty. Notwithstanding the foregoing, the Guarantor shall have no obligation to pay any such costs or expenses if, in any action or proceeding brought by Guaranteed Party giving rise to a demand for payment of such costs or expenses, it is finally adjudicated that the Guarantor is not liable to make payment under Section 2 hereof.

7. Assignment. Guarantor may not assign its rights or delegate its obligations under this Guaranty in whole or part without written consent of Guaranteed Party, provided, however, that Guarantor may assign its rights and delegate its obligations under this Guaranty without the

consent of Guaranteed Party if (a) such assignment and delegation is pursuant to the assignment and delegation of all of Guarantor's rights and obligations hereunder, in whatever form Guarantor determines may be appropriate, to a partnership, limited liability company, corporation, trust or other organization in whatever form that succeeds to all or substantially all of Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, provided, such entity has an Investment Grade Rating by either Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc. ("S&P") or (b) such assignment and delegation is made to an affiliate of Guarantor that has an Investment Grade Rating (as defined in the Agreement). Upon any such delegation and assumption of obligations and, if required, the written consent of Guaranteed Party (which consent shall not be unreasonably withheld, conditioned or delayed), Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. Guaranteed Party may assign its rights or benefits under this Guaranty to any person who has taken proper assignment of the Agreement in accordance with Section 11.2 of the Agreement.

8. Non-Waiver. The failure of Guaranteed Party to enforce any provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce same (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation). All remedies of Guaranteed Party under this Guaranty shall be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. The terms and provisions hereof may not be waived, altered, modified or amended except in a writing executed by Guarantor and Guaranteed Party.

9. Entire Agreement. This Guaranty and the Agreement are the entire and only agreements between Guarantor and Guaranteed Party with respect to the guaranty of the Obligations of Obligor by Guarantor. All agreements or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

10. Notice. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by Guarantor or by Guaranteed Party shall be in writing and shall be deemed received (a) if given personally, when received, (b) if mailed by certified mail (postage prepaid and return receipt requested), five days after deposit in the U.S. mails, (c) if given by facsimile, when transmitted with confirmed transmission or (d) if given via overnight express courier service, when received or personally delivered, in each case with charges prepaid and addressed as follows (or such other address as either Guarantor or Guaranteed Party shall specify in a notice delivered to the other in accordance with this Section):

If to Guarantor:

[]
Attn: []

If to Guaranteed Party:

☐
☐
☐
Attn: ☐

11. Counterparts. This Guaranty may be executed in counterparts, each of which when executed and delivered shall constitute one and the same instrument.

12. Governing Law; Jurisdiction. This Guaranty shall be governed by and construed in accordance with the laws of the state of Washington without giving effect to principles of conflicts of law. Guarantor and Guaranteed Party agree to the non-exclusive jurisdiction of any federal district court located in King County, Washington over any disputes arising or relating to this Guaranty.

13. Further Assurances. Guarantor shall cause to be promptly and duly taken, executed and acknowledged and delivered, such further documents and instruments as Guaranteed Party may from time to time reasonably request in order to carry out the intent and purposes of this Guaranty.

14. Limitation on Liability. Except as specifically provided in this Guaranty, Guaranteed Party shall have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Obligor in the Agreement.

15. Waiver of Jury Trial. GUARANTEED PARTY AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

/SIGNATURE PAGE FOLLOWS/

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty as of the date first set forth above.

[]

By: _____
Name:
Title:

Acknowledged and agreed:

Puget Sound Energy, Inc.

By: _____
Name:
Title:

EXHIBIT D

FORM OF LETTER OF CREDIT

[LETTERHEAD]

[Date]

Irrevocable Standby Letter of Credit No.

Beneficiary:

[]
[]
[]

Attn: []

Phone: []

Applicant:

[]
on behalf on _____

[]
Attn: [Treasury]

Dear Madam or Sir:

We hereby establish for the account of [] on behalf on _____ LLC (the “Account Party”), our irrevocable standby letter of credit in your favor for an amount of USD \$[] ([] Dollars United States currency) (the “Available Amount”). Account Party has advised us that this letter of credit is issued in connection with the], dated as of [] between Account Party and Beneficiary (as amended and as may be further amended, supplemented or otherwise modified). This letter of credit shall (i) become effective immediately for the term of one (1) year and shall expire on [] (the “Expiration Date”), and (ii) is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and purportedly signed by an authorized officer of Beneficiary, dated the date of presentation and (b) the original of the letter of credit and all amendments (if any) (or photocopy of the original for partial drawings) and presented at our office located at [Insert Address, Attention] (or at any other office which may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a “Business Day”). If we receive your presentation at such office on any Business Day, all in conformity with the terms and conditions of this letter of credit, we will unconditionally honor the same by making payment in

accordance with your payment instructions on or before the third succeeding Business Day after such presentation. Partial and multiple drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided* that the Available Amount shall be reduced by the amount of each such drawing.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto purportedly signed by an authorized officer of Beneficiary, accompanied by this letter of credit and all amendments, if any, for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the preceding Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. It is a condition of the letter of credit that it shall be deemed to be automatically extended without amendment for additional one-year periods, unless at least sixty (60) days prior to the Expiration Date we send you notice by registered mail, return receipt requested or courier service or hand delivery at the above address that we hereby elect not to consider this letter of credit extended for such additional period. However, in no event shall this Letter of Credit be automatically extended beyond _____ (the “Final Expiration Date”).

4. This letter of credit shall be governed by, and construed in accordance with, the terms of the International Standby Practices, ISP 98, International Chamber of Commerce Publication No. 590 (the “ISP”), to the extent that such terms are not inconsistent with this letter of credit. As to matters not governed by the ISP, this letter of credit shall be governed by, and construed in accordance with, the laws of the State of New York, including, without limitation, the Uniform Commercial Code as in effect in the State of New York.

5. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1, 2 and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph 6.

6. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no. ____.

Very truly yours,

[LOC Issuer]

Authorized signature

ANNEX 1
TO LETTER OF CREDIT NO. _____

Draft under Letter of Credit No. _____

[Month, Day , Year]

On [*third business day next succeeding date of presentation*]

Pay to [] U.S.D. \$._____ [not to exceed the Available Amount]

[Address 1]

[Address 2]

[*insert any wire instructions*]

For value received and charge to account of Letter of Credit No. _____ .

By: _____

Title: _____

ANNEX 2

TO LETTER OF CREDIT NO. _____

Drawing under Letter of Credit No. _____

The undersigned, a duly authorized officer of [_____], a [_____] located in [_____], (“Beneficiary”), hereby certifies on behalf of Beneficiary with reference to irrevocable standby Letter of Credit No. _____ (the “Letter of Credit”) issued for the account of [_____], that:

- 1) [pursuant to that certain _____ between Beneficiary and _____ dated as of _____, an Event of Default as defined in said Agreement has occurred and as a result, the Beneficiary is entitled to payment of an amount equal to _____ Dollars (USD____) from this Letter of Credit;]

--or--

[(i) Beneficiary has received notice from the Issuing Bank pursuant to Section 3 of the Letter of Credit, and (ii) the Letter of Credit will expire in fewer than thirty (30) Days from the date hereof. As such, as of the date hereof Beneficiary is entitled to draw under the Letter of Credit as specified in the accompanying sight draft.]

- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of USD _____, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft;
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the Available Amount to which Beneficiary is entitled to draft under said _____ as of the date hereof.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized officer as of the date and year written below.

Date: _____

By: _____

Title: _____

ANNEX 3

TO LETTER OF CREDIT NO. _____

Notice of surrender of Letter of Credit No. _____

Date: _____

Attention: Letter of Credit Department

Re: Letter of Credit No. _____ issued for the account of [*account party*]

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the “Letter of Credit”).
The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof.
No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

By: _____

Title: _____

EXHIBIT E

COMMERCIAL OPERATION CERTIFICATE

The undersigned, [] (“Service Provider”) [and _____ (“Licensed Professional Engineer”)] make[s] the following certifications to Puget Sound Energy, Inc. (“Customer”), dated as of _____. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Energy Storage Agreement dated _____ between Service Provider and Customer (the “Agreement”).

Service Provider hereby certifies that:

1. The Contract Capacity of the Project is [] MW_{AC}.
2. Except for punch list items that would not materially affect the performance, reliability, or safe operation of the Project, the same has been erected and installed by the respective suppliers (including the Contractor, the “Suppliers”), in accordance with the material applicable specifications under the respective supply agreements, and is ready for receipt of energy, continuous storage of Energy and delivery of Energy from and to the Interconnection Point in compliance with all Applicable Laws and Governmental Approvals.
3. Except for punch list items that would not materially affect the performance, reliability, or safe operation of the Project, as required under the Agreement, all requirements necessary to achieve commercial operability thereof have been substantially completed.
4. Service Provider’s Interconnection Facilities have been completed in accordance with applicable specifications, tariffs, Laws and Governmental Approvals to enable power stored by the Project to be delivered at the Interconnection Point.
5. Service Provider has obtained all Governmental Approvals necessary for the Project to continuously store and receive at and deliver Energy to the Interconnection Point and the same is in compliance with all such Governmental Approvals and all other Applicable Laws in all material respects.
6. All necessary arrangements for the prudent and proper operation and maintenance of the Project have been put in place and are in full force and effect.
7. Service Provider has a valid leasehold or real property interest in the Site for a term of at least [twenty (20)] years from the Commercial Operation Date.

Licensed Professional Engineer certifies that:

1. We have read the Agreement, the supply agreements, the engineering, procurement and construction contract, and we understand the requirements for Commercial Operation under the Agreement, the specifications and performance testing requirements under the

supply agreements, and the requirements for commercial operation and/or substantial completion under the engineering, procurement and construction and contract.

2. We have reviewed the material and data made available to us by the Service Provider, the Suppliers, and the Contractor for the Project.
3. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Project and in the course of this review we have not discovered any material errors or omissions in the work performed to date.
4. We have reviewed the certifications of Service Provider above, and find the representations provided to be correct in all material respects.
5. We have reviewed all Governmental Approvals and permits identified by the Service Provider as being required for the construction and operation of the Project and are of the opinion that the same is in compliance in all material respects with the environmental and technical requirements contained therein.
6. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of [____], Commercial Operation of the Project has occurred as defined in the Agreement.

Executed this [] day of [], 202[]

SERVICE PROVIDER

[]

an [] limited liability company

By:

Name:

Title:

LICENSED PROFESSIONAL ENGINEER

[Name of Licensed Professional Engineer]

a _____

By: _____

Name:

Title:

ACCEPTED BY PUGET SOUND ENERGY, INC.

By:

Name:

Title:

Date

EXHIBIT F

MILESTONE SCHEDULE¹²

MILESTONE	DATE
Major Engineering Design Complete:	[]
Material Permits Obtained:	[]
Guaranteed Battery Commitment Date	[]
Guaranteed Construction Start Date:	[]
Interconnection Complete:	[]
Target Commercial Operation Date:	[]
Guaranteed Commercial Operation Date:	[]

¹² Note to Draft: Additional Milestones to be included depending upon the development status of the Project.

EXHIBIT G

PERFORMANCE TESTING & PERFORMANCE GUARANTEES¹³

Section 1.01 Performance Testing Protocols.

(a) **General.**

- (i) Conduct of Tests. The Performance Tests shall be conducted in accordance with the provisions of this Exhibit G, the Operating Parameters, Applicable Laws and Prudent Operating Practice.
- (ii) Testing Terminology.

“AGC Testing” means the testing of the Project through Customer’s energy management system (“EMS”) to dispatch energy via an AGC signal.

“Battery Management System” or “BMS” means the electronic control and communication system that manages and protects the Project.

“Concurrent Feature Stacking” means performing multiple battery functions, such as real power dispatch and Frequency Support at the same time utilizing separate portions of the battery’s Effective Capacity. The details of this testing will be defined by the Parties and testing protocols will be developed by the Parties at least one hundred and twenty (120) days prior to the Commercial Operation Date, provided that in all cases the definition and testing protocols shall be in compliance with the battery manufacturer’s capabilities.

“Performance Test” means a test that determines one or more Performance Test Metrics.

“Test Metrics” means metrics (including Performance Test Metrics) that are measured or calculated based on the Performance Tests.

“Effective Capacity” has the meaning set forth in Annex I of the Agreement.

¹³ **Note to Draft:** The Performance Guarantees set forth in this Exhibit G are an indicative list intended to provide the basis for further discussion between Customer and Service Provider. The associated liquidated damage amounts and termination rights tied to such Performance Guarantees will be further developed once the Parties have agreed on the appropriate scope and structure of the Performance Guarantees, including the addition of defined terms as necessary in Annex I.

“Effective Energy Capacity” means the maximum amount of Energy that can be discharged from the Project at the Effective Capacity, as measured in MWh at the delivery point meter and determined pursuant to the most recent Performance Test.

“Frequency Support” means the capability of the Project to ride through frequency disturbances or stabilize system frequency.

“Maximum Charging Rate” means the maximum rate of charging (expressed in MW).

“Maximum Discharging Rate” means the maximum rate of discharging (expressed in MW).

“Other Features” means AGC Testing, Concurrent Feature Stacking, Frequency Support, Voltage Support, and Voltage and Frequency Ride Through and Fine Tuning Simulation Testing.

“Performance Test Metrics” means the Effective Capacity, Effective Capacity, Storage Availability, Maximum Charging Rate, Maximum Discharging Rate, Concurrent Feature Stacking, Frequency Support, Voltage Support, AGC Testing, Roundtrip Efficiency and Voltage and Frequency Ride Through and Fine Tuning Simulation Testing.

“Self-Discharge Rate” means the rate of loss of charge of the Project while idle.

“Voltage and Frequency Ride Through and Fine Tuning Simulation Testing” means the Project modeling, to be completed by the Parties at least ninety (90) days before the Commercial Operation Date using electronic simulation, and not physical on-site testing.

“Voltage Support” means the capability of the Project to produce or absorb reactive power in response to a voltage or reactive power setpoint.

(iii) Design/Baseline Values for Certain Test Metrics¹⁴

Effective Capacity	[]
Effective Energy Capacity	[]
Maximum Charging Rate	[]

¹⁴ **Note to Draft:** Design/Baseline Values subject to PSE’s ongoing review.

Maximum Discharging Rate	[]
Maximum Ramp Rate	[]
Response Time	[]
Self-Discharge Rate	[]

(b) Requirements Applicable to Performance Tests.

- (i) Operation of Test Equipment. At all times during a Performance Test, Service Provider shall operate all equipment in compliance with the applicable test plan and other requirements of this Exhibit G, Prudent Operating Practice and all operating protocols and conditions recommended, required, or established by the manufacturer.
- (ii) Test Instrumentation and Measurements. Service Provider shall provide all instrumentation, metering, and data collection equipment required to perform the Performance Tests. Calibration certificates will be provided with the applicable instruments.
- (iii) Data Collection. All measurements of applicable Test Metrics and related physical parameters shall be collected simultaneously at a temporal resolution applicable to the function of the system application and Test Metrics to which they are being applied and in accordance with recognized standards applicable to the measurements being taken.
- (iv) Test Records. Service Provider shall maintain and provide to Customer detailed records with respect to all Tests and the results thereof, including the raw data and Test Metrics collected or calculated in connection with any Test (the “Test Records”).
- (v) Test Conditions. If abnormal operating conditions occur during a Performance Test that would materially affect the Performance Test results, the Parties shall coordinate to postpone or reschedule all or part of such Test as is necessary. Notwithstanding anything to the contrary in this Exhibit G, Service Provider shall have the unilateral right to cease any Performance Tests if Service Provider determines that a matter or event is occurring that may damage or adversely affect the Project or related equipment or instrumentation.
- (vi) Waivers and Modifications. Notwithstanding anything to the contrary in this Exhibit G, the Parties may mutually agree to shorten the run periods or waive a particular portion of a Performance Test, or otherwise modify the parameters for such Performance Test, at any time. Such agreement with respect to any one Performance Test shall not modify the requirements of this Exhibit G with respect to any subsequent Performance Tests.

(vii) Retests; Incomplete or Non-Conforming Tests.

- 1) If Service Provider completes only a portion of a Performance Test, then Customer may, in its reasonable discretion: (a) accept the Performance Test results up to the time the Performance Test stopped; (b) require that the portion of the Performance Test not completed be completed within a reasonable specified time period; or (c) reject the Performance Test, in which case Service Provider will repeat the Performance Test.
- 2) If the performance of any Performance Test is not in conformance with the applicable test plan or other requirements of this Exhibit G, or if Test Records provided by Service Provider to Customer for any Performance Test are materially incorrect or incomplete as demonstrated by the records and notes of the Customer representative who attended the Performance Test on Customer's behalf, and Service Provider fails or is unable to promptly correct or complete them, then Customer may, in its reasonable discretion, reject the Performance Test, in which case Service Provider will repeat the Performance Test.
- 3) The records from any valid retest shall be used to determine performance as of the date of the original Performance Test being repeated.

(viii) Final Report. Within fifteen (15) Business Days after the completion of a Performance Test (including a retest), Service Provider shall prepare and submit to Customer a written report of the Performance Test in a format reasonably acceptable to Customer. At a minimum, the report shall include:

- 1) a record of any unusual or abnormal conditions or events that occurred during the Performance Test and any actions taken in response thereto;
 - 2) reference to the applicable Test Records;
 - 3) the system performance in relation to the applicable Test Metrics, either by direct measurement or via agreed to calculation; and
 - 4) Service Provider's statement of either Service Provider's acceptance of the Performance Test or Service Provider's rejection of the Performance Test results and reason(s) therefor.
- (ix) Within ten (10) Business Days after receipt of such report, Customer shall notify Service Provider in writing of either Customer's acceptance of the Performance Test results or Customer's rejection of the Performance Test and reason(s) therefor. If Customer does not deliver a timely rejection, Customer will be deemed to have accepted the Performance Test results.
- (x) If Customer reasonably rejects the results of any Performance Test or retest based on the final report, Service Provider shall repeat such Performance Test.

(c) Performance Tests.

- (i) Test Dates. Service Provider shall provide Customer with at least ten (10) Business Days' notice of Service Provider's proposed dates for a Performance Test. Service Provider shall reasonably cooperate with Customer to conduct the Performance Test during hours of the day that are most beneficial for operation of the Project. Service Provider shall not conduct any Performance Tests during Summer Months or Winter Months without the Customer's prior written consent. Notwithstanding the foregoing, Service Provider may conduct the Performance Test during Summer Months or Winter Months if the Effective Capacity is less than the Contract Capacity and Service Provider has reasonably demonstrated to Customer that it has conducted work to increase the Effective Capacity following the date that the last Performance Test was completed. Customer shall have the right to request that Service Provider perform a Performance Test at any time. If the open metering system is showing the Effective Capacity is less than 90% of the Contract Capacity determined in the most recent Performance Test for more than twenty four (24) hours, then the Customer may request a Performance Test and Service Provider shall reasonably cooperate with Customer to conduct the Performance Test within five (5) Business Days. Furthermore, if a Performance Test cannot be run due to an outage that prevents the Performance Test or prevents the Performance Test from occurring within five (5) Business Days, the Effective Capacity will be deemed to be zero (0) until such time as the Service Provider completes the Performance Test.
- (ii) Test Plan. At least thirty (30) days before the Performance Test date, Service Provider shall provide Customer with a detailed proposed test plan that documents all the procedures for conducting and validating all of the applicable Performance Test Metrics. The test plan shall indicate all measurement points and devices needed for each Performance Test and shall note the frequency at which data must be measured and recorded to validate the Performance Test Metrics. Customer shall have a reasonable opportunity to review the proposed test plan and make suggested edits or clarifications, which Service Provider shall reflect in a revised test plan. Each Performance Test shall be performed in accordance with a test plan mutually agreed upon by Customer and Service Provider.
 - 1) The sole purpose of the Performance Test will be the determination of one or more Test Metrics.
 - 2) Data shall be recorded by the SCADA System data logging functions. The use of alternative means for data acquisition shall be used only with prior written consent of Customer. Service Provider shall supply all raw data from the SCADA system, daily during pre-test activities and during testing phase.
 - 3) Prior to the start of testing the Project, the control settings (tuning and constants) shall be verified.

- 4) Any alteration or modifications to test measurement devices, or to the Project, which could reasonably be expected to influence the outcome of the applicable Performance Test, shall not be permitted without prior written consent of Customer, and if accepted by Customer, shall be fully documented by Service Provider and Customer.
- (iii) Test Methodology. The Performance Test will be performed per the most up to date methodology recommended by the battery manufacturer. This is generally expected to involve the following steps:
- 1) The system will be fully discharged to 0% SOC, potentially with a temporary rest state prior to or during such full discharge.
 - 2) The system will be left at rest in an active standby state for a period of time as recommended by the battery manufacturer.
 - 3) The system will be charged to 100% SOC at the Maximum Charging Rate. The charging rate may be limited by available resources or, at higher SOC's, by the BMS. The aggregate Charging Energy (MWh) used to achieve such charging, WhI will be measured and recorded.
 - 4) The system will be left at rest in an active standby state for a period of time as recommended by the battery manufacturer.
 - 5) The system will be discharged to 0% SOC at the Maximum Discharging Rate. The discharging rate may be limited by the BMS at lower SOC's. The total discharging time required to reach the SOC at which the discharging rate is limited will be recorded. The total Discharged Energy (MWh) discharged in reaching the point where the BMS limits the discharging rate, WhDi, will be measured and recorded.
 - 6) The Effective Energy Capacity shall equal the Discharged Energy (WhDi), as determined above.
 - 7) The Effective Capacity shall be the lower of (a) Effective Energy Capacity divided by four (4) hours or (b) the Maximum Discharging Rate.
 - 8) The total Charging Energy input (WhI) and the total Discharged Energy output (WhDi) from the Test shall be used to determine the Roundtrip Efficiency.
 - 9) The power and times (hours/minutes/seconds) recorded in the steps above shall be used to determine the Maximum Charging Rate, Maximum Discharging Rate, Minimum Charging Time, and Minimum Discharging Time.
- (iv) Timing of Performance Tests for Other Features. Performance Tests for Other Features will only be required (1) as part of the Commercial Operation Test or (2) if requested by Customer.

Section 1.02 Performance Guarantees.

(a) **Guaranteed Storage Availability.**

- (i) Service Provider guarantees that the Storage Availability during each Contract Year of the Term shall be no less than (A) [____]% in the first Contract Year and (B) [____]% in each Contract Year thereafter (collectively, the “Guaranteed Storage Availability”), calculated in accordance with the following procedure. No later than ten (10) Business Days following the conclusion of each Contract Year, Service Provider shall calculate the Storage Availability as follows:

$$\frac{H - EF - TP - FM}{H - TP - FM}$$

$$H - TP - FM$$

Where:

H = Total Number of Hours in the applicable Contract Year;

EF = Equivalent Forced Outage Hours in the applicable Contract Year; and

TP = Total Effective Planned Outage Hours and Augmentation Hours in the applicable Contract Year

FM = Total Force Majeure Hours in the applicable Contract Year

- (ii) For purposes of this Section 1.02 to Exhibit G, the following terms have the following meanings:
- 1) “Equivalent Outage Hour” means, for any Outage, the product of the de-rated condition duration and the ratio of the unavailable capacity to the Effective Capacity; provided, however, that the Project shall be deemed available and no Outage shall be deemed to have occurred to the extent that the capacity of the Project (including the ability to charge and/or discharge the battery) is reduced as a result of a Service Provider Excuse.
 - 2) “Equivalent Forced Outage Hours” means the number of Equivalent Outage Hours attributable to Forced Outages during the Contract Year.
 - 3) “Storage Availability” means a percentage equal to the fraction (a) the numerator of which is equal to (i) the total number of hours in a an applicable Contract Year, minus (ii) the Equivalent Forced Outage Hours in the applicable Contract Year, minus (iii) the Total Effective Planned Outage Hours and Augmentation Hours in the applicable Contract Year, and (b) the denominator of which is equal to (i) the total number of hours in a an applicable Contract Year, minus (ii) the Total Effective Planned Outage Hours and Augmentation Hours in the applicable Contract Year.

- 4) “Total Effective Planned Outage and Augmentation Outage Hours” means the number of Equivalent Outage Hours attributable to Planned Outages and Augmentation Outages, plus the number of hours during which Service Provider is successfully performing Performance Testing in accordance with the Agreement. For purposes of this Exhibit G, Total Effective Planned Outage Hours (excluding hours during Testing) and Augmentation Hours may not exceed [____] hours in the aggregate across any Contract Year.
- 5) “Total Force Majeure Hours” means the number of Equivalent Outage Hours attributable to an event of Force Majeure during the Contract Year.
- (iii) Reporting and Payment. Within thirty (30) days after the conclusion of each Contract Year, Service Provider will deliver to Customer a report, in a form mutually agreeable to Customer and Service Provider (“Availability Report”), setting forth, in reasonable detail, Service Provider’s computation of the Storage Availability. Service Provider shall promptly deliver to Customer any data or other back-up information that Customer deems reasonably necessary to evaluate the Availability Report.

(b) Effective Capacity Test.

- (i) In connection with the establishment of the Commercial Operation Date, and thereafter no later than thirty (30) days following the conclusion of each Contract Year during the Term (or as otherwise may be required by Customer), the Effective Capacity of the Project shall be calculated in accordance with the testing procedures set forth in Section 1.01 of this Exhibit G.

(c) Guaranteed Roundtrip Efficiency Test.

- (i) In connection with the establishment of the Commercial Operation Date, and thereafter no later than thirty (30) days following the conclusion of each Contract Year during the Term (or as otherwise may be required by Customer), the Roundtrip Efficiency of the Project shall be calculated in accordance with the following equation pursuant to the procedures set forth in Section 1.01 of Exhibit G:

$$\text{Round Trip Efficiency (RTE)} = \frac{\text{Discharging Energy (WhD)}}{\text{Charging Energy (WhI)}}$$

- (ii) For the avoidance of doubt, the Roundtrip Efficiency will be determined pursuant to the Performance Tests, over a time period that will not be materially affected by the Self-Discharge Rate.

(d) Charge Rate Test.

- (i) No later than thirty (30) days prior to the scheduled Commercial Operation Date, and thereafter no later than thirty (30) days following the conclusion of each Contract Year during the Term (or as otherwise may be required by Customer), the Charge Rate of the Project will be determined in accordance with the procedures set forth in Section 1.01 of Exhibit G.
- (ii) The “Charge Rate” shall be equal to as the Effective Energy Capacity divided by the time required to charge the Contract Capacity.
- (iii) The Charge Rate shall be determined as part of the Roundtrip Efficiency Test.

(e) Ramp Rate Test.

- (i) No later than thirty (30) days prior to the scheduled Commercial Operation Date, the Ramp Rate of the Project will be determined in accordance with the procedures set forth in Section 1.01 of Exhibit G.
- (ii) “Ramp Rate” means the fastest rate at which the Project achieves the Maximum Charging Rate or Maximum Discharging Rate, as applicable.
- (iii) The Project shall be capable of responding to input signals and reaching 98% of full power charging and discharging within 200 ms.

(f) Response Time Test.

- (i) No later than thirty (30) days prior to the scheduled Commercial Operation Date, the Response Time of the Project shall be determined in accordance with the procedures set forth in Section 1.01 of Exhibit G.
- (ii) “Response Time” means the amount of time for the Project to respond to a dispatch signal from Customer. Response Time shall be measured from when Customer’s dispatch signal is received by Service Provider’s site control equipment, to when the Project achieves the dispatch signal setpoint.
- (iii) The Project shall be capable of responding to input signals and responding within 200 ms.
- (iv) The Response Time of the Project shall be determined concurrently with the Ramp Rate Test.

EXHIBIT I

GUARANTEED ROUNDTRIP EFFICIENCY

Guaranteed Roundtrip Efficiency shall mean the Roundtrip Efficiency specified below for a given Contract Year:

Contract Year	Guaranteed Roundtrip Efficiency
1	
2	
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EXHIBIT J

MATERIAL PERMITS AND MATERIAL GOVERNMENTAL APPROVALS

Material Permits:

[]

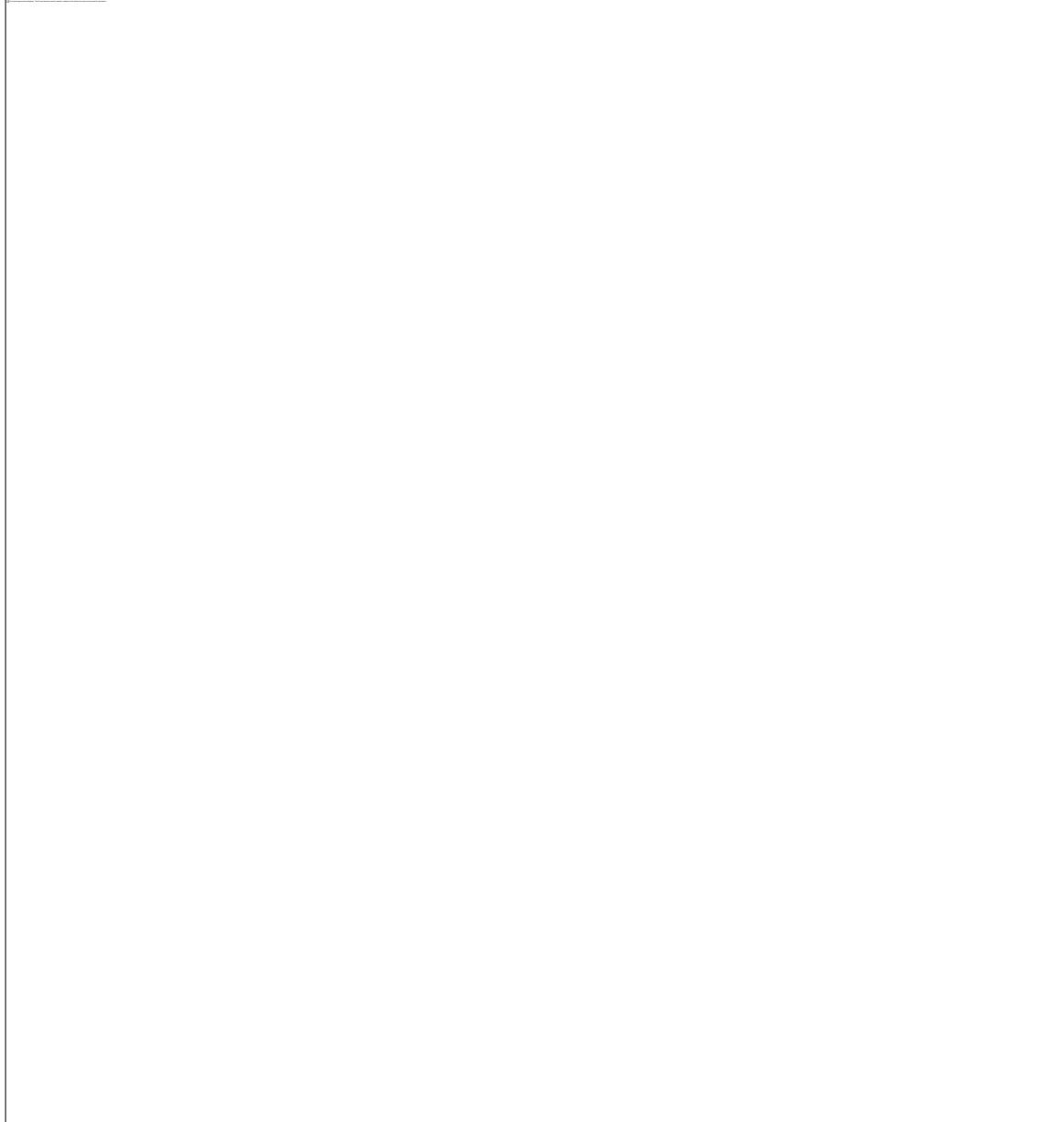
Material Governmental Approvals:

[]

EXHIBIT K

CUSTOMER BENEFIT PLAN SURVEY

Example survey provided by Customer to Service Provider to be sent to all employees and contract staff working on the Project. The survey will be sent twice per year during the construction phase and once per year thereafter. PSE may update the survey from time to time, as mutually agreed to by Service Provider.



*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit K-3. Form Membership Interest Purchase Agreement (MIPA)

Confidential

For reference only.

PSE is not requesting a redlined form agreement as part of a bidder's RFP proposal.

This working draft is subject to change, does not constitute a binding offer, shall not form the bases for an agreement by estoppel nor otherwise, and is conditioned upon each party's receipt of all required management approvals (including final credit and legal approval) and all regulatory approvals. Any action taken by a party in reliance on the terms set forth in this working draft or on statements made during negotiations pursuant to this working draft shall be at that party's own risk. Until this agreement is negotiated, approved by management, executed, delivered and approved by all required regulatory bodies, no party shall have any other legal obligations, expressed or implied, or arising in any other manner under this working draft or in the course of negotiations.

MEMBERSHIP INTEREST PURCHASE AGREEMENT

by and between

[•],

as Seller

and

Puget Sound Energy, Inc.

as Buyer

Dated [•], 2024

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EXHIBITS

Exhibit A	Form of Assignment Agreement
Exhibit B	Ready for NTP State
Exhibit C	Site Plans
Exhibit D	Form of Seller Guaranty
[Exhibit E]	[Form of Begun Construction Certificate]

MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (this “Agreement”), dated as of [•], 2024 (the “Execution Date”), is by and between [•], a [•] [limited liability company][corporation] (“Seller”), and Puget Sound Energy, Inc., a Washington corporation (“Buyer”). Seller and Buyer are each individually referred to herein as a “Party” and collectively are referred to herein as the “Parties.”

RECITALS

A. [•], a [•] [limited liability company][corporation] (“Project Company”), owns, or will own, all of the Assets associated with the potential development of (1) a project sized at approximately [[•]MW_{AC}][[•]MWAC/[•]MWh] of [wind generation][solar photovoltaic][battery energy storage system] capacity (the “Project”) located in [•] County, [•];

B. Concurrently with the execution of this Agreement, [•], a [•] [limited liability company][corporation] (“Seller Parent”) has delivered a guaranty in respect of Seller’s obligations under this Agreement substantially in the Form of Exhibit D attached hereto (the “Seller Guaranty”);

C. Seller owns or will own as of the Closing Date, beneficially and of record, one hundred percent (100%) of the issued and outstanding membership interests in the Project Company (the “Membership Interests”); and

D. Seller desires to sell, assign, convey, deliver and transfer to Buyer, and Buyer desires to purchase, on the terms and subject to the conditions of this Agreement, all of the Membership Interests, and consummate each other transaction incidental to the foregoing and contemplated herein (collectively, the “Transaction”).

NOW, THEREFORE, in consideration of the foregoing recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms when used in this Agreement with initial letters capitalized have the meanings set forth below:

“Action” means any complaint, suit, proceeding, claim, arbitration, demand, assertion or other similar action.

“Affiliate” means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person, means the possession of the power to direct the management or policies of the specified Person, directly or indirectly, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

“Agreement” is defined in the introductory paragraph of this Agreement.

“Allocation” is defined in Section 2.5.

“Assets” means, with respect to any Person, all right, title and interest of such Person in and to assets and rights of any kind, whether tangible or intangible, real or personal, including the Real Property and Real Property Documents, buildings, equipment, machinery, improvements, fixtures, contracts, Environmental Attributes, [wind data][solar data], reports and studies (including those related to interconnection, environmental, cultural, resource and market matters), Permits, Intellectual Property, inventory, Books and Records, proprietary rights, return and other rights under or pursuant to all warranties, representations and guarantees, cash, accounts receivable, deposits and prepaid expenses.

“Assignment Agreement” is defined in Section 2.4(a)(i).

“Books and Records” means electronic copies of all books and records relating primarily to the ownership, business or condition of the Project Company and the Assets held by the Project Company, in each case that are within the possession or control of Seller or its Affiliates, but excluding any such records that are subject to attorney work-product doctrine or records that are subject to attorney-client or other privilege, the disclosure or delivery of which to Buyer could result in the loss of such privilege; *provided*, that Seller hereby reserves the right to retain copies of such Books and Records, including without limitation tax records, following the Closing as is reasonably necessary to comply with internal recordkeeping policies, accounting procedures or applicable Law.

“Business Day” means a day other than Saturday, Sunday or a day on which banks are legally closed for business in the State of Washington or New York.

“Buyer” is defined in the introductory paragraph of this Agreement.

“Buyer Claims” is defined in Section 8.2.

“Buyer Disclosure Schedule” means the disclosure schedule delivered from Buyer to Seller and attached to this Agreement.

“Buyer Fundamental Representations” means Buyer’s representations in Section 5.1 (Organization and Existence), Section 5.2 (Execution, Delivery and Enforceability), Section 5.3(a) (No Violation) and Section 5.5 (Brokers).

“Buyer Indemnification Cap” is defined in Section 8.5(c).

“Buyer Indemnified Parties” is defined in Section 8.2.

“Buyer’s Persons with Knowledge” means those individuals identified in Schedule 1.1(a).

[“Buyer Required Consents” means the consents or other approvals of any Governmental Authorities or other Persons specified in Schedule 5.6.]

“Claim” is defined in Section 8.4(a).

“Claimed Amount” is defined in Section 8.4(a).

“Claim Notice” is defined in Section 8.4(a).

“Closing” is defined in Section 2.3.

“Closing Date” is defined in Section 2.3.

“Closing Payment” is defined in Section 2.2(a)(i).

“Closing Required Permit” means a material Permit required in connection with the ownership, development, construction, operation or maintenance of the Project pursuant to applicable Law where the issuing Governmental Authority exercises discretion in deciding to approve or disapprove the Permit.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidential Information” is defined in Section 9.3(a).

“Construction Agreement” means the [balance-of-plant plus erection agreement][engineering, procurement and construction agreement] with respect to the Project to be entered into between Project Company and Construction Contractor.

“Construction and Equipment Agreements” is defined in Section 6.8.

“Construction Contractor” means the contractor under the Construction Agreement.

“Contested Amount” is defined in Section 8.4(a).

“Design Documents” means the design drawings, specifications and similar documents which set forth in detail requirements for the construction of the Project.

“Disclosing Party” is defined in Section 9.3(a).

“Encumbrances” means any and all mortgages, pledges, claims, liens, security interests, options, purchase rights, conditional and installment sales agreements, defects of title, and other encumbrances and charges of any kind.

“Enforceability Exceptions” means bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or other similar Laws of general application relating to or affecting the enforcement of creditors’ rights and by general equitable principles (regardless of whether enforceability is considered in a proceeding in equity or at law).

“Environmental Attributes” means all present or future rights, interests, claims, benefits or characteristics attributable to the Project that are recognized, created, generated or otherwise exist or arise from the Project (whether before, on or after the Closing). Forms of Environmental Attributes include any and all renewable energy credits, environmental air quality credits, waste management credits, water quality credits, carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled.

“Environmental Law” means all Laws relating to pollution, protection of the environment, protection of wildlife, species and habitat, or the exposure to or generation, handling, storage, use, disposal, transport, treatment or Release of Hazardous Substances. Environmental Laws shall include, but are not limited to: the Clean Air Act, 42 U.S.C. §7401 et seq. (CAA), the Clean Water Act, 33 U.S.C. § 1251 et seq. (CWA), the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Resource Conservation Recovery Act, 42 U.S.C. §6901 et seq.

(RCRA), the Safe Drinking Water Act, 42 U.S.C. §300f et seq., the Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act, 32 U.S.C. §9601 et seq. (CERCLA), the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (TSCA), the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. (OSHA) (insofar as it concerns exposure to hazardous substances), and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq., and any state or local laws implementing or substantially equivalent to the foregoing federal requirements, and other similar laws.

“Environmental Representations” means the representations set forth in Section 4.13.

“ERISA” means the Employee Retirement Income Security Act of 1974, as may be amended, modified, supplemented or replaced from time to time

“Execution Date” is defined in the introductory paragraph of this Agreement.

“FERC” means the United States Federal Energy Regulatory Commission and any successor thereto.

“FPA” means the Federal Power Act, 16 U.S.C. § 791a, *et seq.*, and the rules and regulations adopted thereunder, as they may be amended from time to time.

“Governmental Authority” means any federal, state, tribal, local or foreign governmental, regulatory or administrative agency, commission, body or other authority or instrumentality exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power.

“Hazardous Substances” means (a) any substance, waste, contaminant or material that is listed, defined, designated, classified or regulated as hazardous, radioactive or toxic, or as a pollutant or contaminant, under or pursuant to any applicable Environmental Law, including materials defined as hazardous substances pursuant to Section 101(14) of CERCLA, as a “hazardous substance,” “extremely hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” or words of similar meaning and regulatory effect; (b) any other material subject to treatment as hazardous by reason of ignitability, corrosivity, reactivity, or toxicity; and (c) any pollutants, effluents, residues, contaminants, asbestos, petroleum (including all petroleum-related and derived products, by-products, and wastes), polychlorinated biphenyls, urea formaldehyde, per- and polyfluoroalkyl substances, radon gas, radioactive materials (including any source, special nuclear, or by-product material), explosives, chlorofluorocarbons, lead or lead-based materials.

“Indebtedness” means, with respect to any Person, all obligations of such Person (i) for borrowed money, (ii) evidenced by notes, bonds, debentures or other similar instruments, (iii) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business), (iv) under all capital leases, (v) all obligations under letters of credit, bankers’ acceptances or note purchase facilities issued for the account of such Person and all drafts drawn thereunder, including principal, interest, fees and other amounts payable with respect thereto, (vi) all obligations of such Person under any derivative agreement, hedging agreement, interest rate agreement or similar agreements, and (vii) in the nature of guaranties of the obligations described in clauses (i) through (vi) above of any other Person.

“Indemnification Cap” is defined in Section 8.5(c).

“Indemnified Party” means a Buyer Indemnified Party or a Seller Indemnified Party, as applicable.

“Indemnified Tax Claim” is defined in Section 6.2(c).

“Indemnifying Party” is defined in Section 8.4(a).

“Indirect Damages” is defined in Section 10.1(b).

“Industry Practices” means those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by electric industry members in the United States in connection with energy projects similar to the Project as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the electric industry in light of the facts known at the time a decision is made, would be reasonably expected to accomplish the result intended at a reasonable cost and consistent with applicable Laws, reliability, safety and expedition. Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

“Intangible Personal Property” means all Intellectual Property and all applications, databases, computer files and intangible information or materials relating primarily to the Project.

“Intellectual Property” means all patents, patent rights, trademarks, trademark rights, trade names, trade name rights, copyrights, service marks, service mark rights, trade secrets, applications to register, and registrations for, the foregoing trademarks, service marks, know-how and other proprietary rights and information.

“Interconnection Agreement” means that certain [Standard Large Generator Interconnection Agreement, dated as of [•], [•]], between Interconnection Provider and Project Company, as may be amended or otherwise modified from time to time.

“Interconnection Provider” means [•].

“ITC” means the energy credit pursuant to Section 48 of the Code or the clean electricity investment credit pursuant to Section 48E of the Code.

“Knowledge” means the actual knowledge, after reasonable inquiry, of (a) Seller’s Persons with Knowledge as of the date of this Agreement (or, with respect to the certificate delivered pursuant to Section 7.1(d) the date of delivery of such certificate) or (b) Buyer’s Persons with Knowledge as of the date of this Agreement (or, with respect to the certificate delivered pursuant to Section 7.2(c), the date of delivery of such certificate). For purposes of this definition, “reasonable inquiry” means, with respect to the individuals identified on Schedule 1.1(a) or Schedule 1.1(b), as applicable, such individual has (x) used reasonable efforts to review records within his or her possession or control with respect to such representation, warranty or other matter involved and (y) to the extent necessary in order to establish a reasonable basis of belief, used reasonable efforts to inquire with those employees and other persons over whom such individual has supervisory authority and who have responsibility and expertise for the subject matter of the representation or warranty or other matter involved.

“Law” or “Laws” means all statutes, laws, acts, rules, regulations, ordinances, Orders, codes, and treaties of Governmental Authorities.

“Losses” is defined in Section 8.2.

“Material Adverse Effect” means any state of facts, change, development, event, effect, condition or occurrence that, individually or in the aggregate with all other such states of facts, changes, developments, events, effects, conditions or occurrences, is, or would reasonably be expected to be, materially adverse to the current business, Assets, properties, liabilities, results of operations or condition (financial or otherwise) of the Project Company or the Project; *provided*, that the term “Material Adverse Effect” shall not include any such change resulting from (i) changes in general international, national, regional or local economic, financial or credit markets or market conditions, (ii) generally effective changes in the industry in which the Project Company operates, (iii) changes in Law, accounting standards, principles or interpretations, (iv) the announcement or consummation of the Transaction or actions taken or omissions made by a Party at the written request or with the written consent of the other Party, or (v) the outbreak or escalation of hostilities or war, the declaration of a national emergency or war or the occurrence of any other calamity or crisis, including acts of terrorism, except that in the case of clauses (i) through (iii), to the extent that the adverse effect on the Project Company or the Project is materially disproportionate to the adverse effect on similarly situated projects.

“Material Project Contracts” means, with respect to the Project Company, (i) any contract (A) to which the Project Company is a party, or by the terms of which the Project Company or its Assets are bound and (B) for which the expected costs of performing such contract by the Project Company, or the revenues expected be received under such contract by the Project Company, exceed \$50,000 in any calendar year or \$150,000 in the aggregate during the term of such contract; (ii) any contract between the Project Company and any of its Affiliates; (iii) any teaming or similar agreement in connection with the development of the Project; (iv) any interconnection or transmission-related agreements or applications for interconnection or transmission of or from the Project; (v) any power purchase or sale agreement, including any agreement for the purchase, exchange or sale of energy, capacity, ancillary services or related attributes (vi) any Construction and Equipment Agreement or any other construction or equipment supply agreement; (vii) any exclusivity agreements with a construction contractor, any equipment supplier or other supplier or utility; (viii) any contract providing for any Indebtedness of the Project Company or the mortgaging, pledging or otherwise placing an Encumbrance secured by the Assets of the Project Company, or the guarantying of any obligation (other than endorsements made for collection) or that is otherwise related to any Indebtedness; (ix) all employment or severance agreements binding upon the Project Company; and (x) any Real Property Document.

“Membership Interests” is defined in the recitals to this Agreement.

“Notice to Proceed” shall mean a full notice to proceed directing the Construction Contractor to commence all or substantially all of the work comprising the Project without condition or delay.

[“Transmission Rights” means *[insert required transmission service description]*.]

“NTP Payment” is defined in Section 2.2(a)(ii).

“Order” means any writ, order, award, injunction, judgment, decree, ruling, subpoena or verdict or other decision issued, promulgated or entered by or with any Governmental Authority or arbitrator of competent jurisdiction.

“Outside Date” means [•].

“Party” and “Parties” are defined in the introductory paragraph of this Agreement.

“Permit” means any written authorization, approval, consent, waiver, exception, variance, Order, notice, license, filing, registration, ruling, permit, tariff, certification, exemption, clearance, concurrence, decree, grant, letter ruling or other action by, to, or with any Governmental Authority.

“Permitted Encumbrances” means (a) Encumbrances listed on Schedule 1.1(c), (b) Encumbrances created by Buyer, its Affiliates, or their successors or permitted assigns, (c) any Encumbrance for Taxes that are not yet due or payable or are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (d) any statutory Encumbrance arising in the ordinary course of business by operation of Law with respect to a liability that is not yet delinquent (including mechanics’, materialmen’s, warehousemen’s, repairmen’s, landlord’s, and other similar liens) or that is being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (e) defects or imperfections of title, easements, covenants, rights of way, restrictions and other similar charges or encumbrances not materially interfering and not reasonably likely to materially interfere with, as applicable, the development, construction, ownership and operation of the Project, (f) the rights of lessees and lessors of the Real Property pursuant to the terms and conditions of the applicable lease agreement which in each case has been delivered to Buyer in accordance herewith, (g) Encumbrances arising out of, under or in connection with this Agreement, and (h) zoning, building and other generally applicable land use restrictions promulgated by a Governmental Authority that do not materially impair the contemplated use by the Project Company of the Site.

“Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, any Governmental Authority, or any other entity.

“Phase I Environmental Site Assessment” means a Phase I Environmental Site Assessment, dated less than six (6) months prior to the Closing Date, prepared by a reputable environmental consultant reasonably acceptable to Buyer, in accordance with regulations found at 40 C.F.R. Part 312.

“Project” is defined in the recitals to this Agreement.

“Project Company” is defined in the recitals to this Agreement.

“Project Company Permit” is defined in Section 4.10(a).

“Project Company Required Consents” means the consents or other approvals of any Governmental Authorities or other Persons specified in Schedule 4.8.

“Projections” has the meaning ascribed to such term in Section 11.17.

“Project Substantial Completion” [has the meaning ascribed to such term in the Construction Agreement.]

“Project Substantial Completion Capacity” means the nameplate MW_{AC} [wind generation][photovoltaic generation] capacity (based on the manufacturer’s nameplate rating of the [wind turbines][photovoltaic modules]) of the Project on an as-built basis as of Project Substantial Completion.

“Project Substantial Completion Payment” means an amount equal to (A) \$[•] per each MW_{AC} of the Project Substantial Completion Capacity, *minus* (B) the NTP Payment.

“Property Taxes” is defined in Section 6.2(a).

“PTC” means the renewable electricity production credit pursuant to Section 45 of the Code or the clean electricity production credit pursuant to Section 45Y of the Code.

“PUHCA” means the Public Utility Holding Company Act of 2005, enacted as part of the Energy Policy Act of 2005, Pub. L. No. 109-58, as codified at § 1261 et seq., and the rules and regulations thereunder, as they may be amended from time to time.

“Purchase Price” is defined in Section 2.2(a).

“PURPA” means the Public Utility Regulatory Policies Act of 1978, as amended, and the rules and regulations thereunder, as they may be amended from time to time.

“Ready for NTP State” is defined in Exhibit B.

“Real Property” means all of the real property that comprises the real property portion of the Assets held by the Project Company.

“Real Property Documents” is defined in Section 4.12(a).

“Receiving Party” is defined in Section 9.3(a).

“Release” or “Released” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, releasing, depositing, dispersing, migrating, or allowing the escape or migration of any Hazardous Substances.

“Renewable Energy Incentives” shall mean: (a) federal, state, or local Tax credits or other Tax benefits (such as accelerated depreciation or the PTC or ITC) associated with the Project, including such Tax credits or other Tax benefits relating to the construction or ownership of the Project or the production, storage, or sale of electricity with respect to the Project, and including any governmental or third party payments made in lieu of, or as consideration for, such credits or other benefits and (b) any federal, state or local grants, rebates, subsidized financing or any other subsidy relating to the property of the Project or the outputs thereof.

“Requested Permits” is defined in Section 4.10(b).

“Required Permits” is defined in Section 4.10(c).

“Representatives” is defined in Section 9.3(a).

“Response Notice” is defined in Section 8.4(a).

“Seller” is defined in the introductory paragraph of this Agreement.

“Seller Claims” is defined in Section 8.3.

“Seller Disclosure Schedule” means the disclosure schedule attached to this Agreement.

“Seller Fundamental Representations” means Seller’s representations in Section 3.1 (Organization and Existence), Section 3.2 (Execution, Delivery and Enforceability), Section 3.3 (Membership Interests), Section 3.4 (No Violation), Section 3.6 (Brokers), Section 4.1 (Organization and Existence), Section 4.2 (No Prior Business), Section 4.4 (No Violation) and Section 4.9 (Project Assets).

“Seller Guaranty” is defined in the recitals.

“Seller Indemnification Cap” is defined in Section 8.5(c).

“Seller Indemnified Parties” is defined in Section 8.3.

[“Seller Required Consents” means the consents or other approval of any Governmental Authorities or other Persons specified in Schedule 3.8.]

“Seller Parent” is defined in the recitals.

“Seller Taxes” means (a) any Taxes of, imposed on or attributable to Seller, any of its direct or indirect owners or any Affiliate of any of the foregoing (other than the Project Company) for any Tax period, (b) any Taxes of, attributable to or imposed on the Project Company to the extent allocable or attributable to any Tax period (or portion thereof) ending on or before the Closing Date, determined in accordance with Section 6.2(a) in the case of a Straddle Period, (c) any withholding Taxes imposed on Buyer or any of its Affiliates (including the Project Company) resulting from the transactions contemplated by this Agreement, (d) any Transfer Taxes, and (e) any Taxes and other Losses attributable to a breach by Seller of any of the representations or warranties set forth in Section 4.7 or covenants pursuant to Section 6.2.

“Seller’s Persons with Knowledge” means those individuals identified in Schedule 1.1(b).

“Site” means the premises where the Project will be located.

“Site Plans” means the site plans for the Project set forth as Exhibit C attached hereto.

“Straddle Period” is defined in Section 6.2(a).

[“Subsequent Project” means, other than as contemplated by this Agreement with respect to the Project, a development project to install wind or solar generation capacity or battery storage capacity, in any such case, in the State of [*Project Location*].]

[“Subsequent Project Wake Liabilities” means any losses in output reasonably likely to be sustained by the Project as a result of wake effects attributable to turbines placed in service by Seller or its Affiliates in a Subsequent Project.]¹

“Survey” is defined in Section 6.6(b).

¹ **Note to Draft:** To be included as applicable for wind projects.

“Tax” or “Taxes” means (a) any federal, state, local, foreign or other tax, fee, levy, duty, assessment or other similar governmental charge, including any income, franchise, gross receipts, personal or real property, intangible, sales, use, services, value added, withholding, social security, disability, estimated, alternative or add-on minimum, transfer, license, payroll, profits, capital stock, capital gain, employment, unemployment, worker’s compensation, excise, severance, stamp, windfall profit, occupancy, recording fee, environmental, customs or occupation tax, and any interest, additions to tax and penalties in connection therewith, (b) any liability for the payment of amounts described in clause (a) above as a result of transferee liability, of being a member of an affiliated, consolidated, combined, or unitary group for any period or otherwise by operation of law, and (c) any liability for the payment of amounts described in clauses (a) or (b) above as a result of any tax sharing, tax indemnity, or tax allocation agreement or any other agreement to indemnify any other Person.

“Tax Consideration” is defined in Section 2.5.

“Tax Proceeding” is defined in Section 6.2(b).

“Tax Return” means any return, report, information return, declaration, claim for refund, or other document, together with all amendments, attachments and supplements thereto (including all related or supporting information), filed or required to be filed or otherwise maintained for or supplied to any Governmental Authority responsible for the administration of Laws governing Taxes (including any such items that are filed on a consolidated, unitary, combined, group or similar basis).

“Third Party Claim” means a claim that is (i) by a Person that is not a Seller Indemnified Party or a Buyer Indemnified Party.

“Threshold Amount” is defined in Section 8.5(b).

“Title Company” is defined in Section 6.6(a).

“Title Policy” is defined in Section 6.6(a).

“Transaction” is defined in the recitals to this Agreement.

“Transaction Documents” means, with respect to each Party or any Affiliate of such Party, all agreements, certificates, instruments and documents being or to be executed and delivered by such Party or such Party’s Affiliate under this Agreement in connection with the Closing.

“Transfer Tax” means any transfer Tax, sales Tax, value added Tax, transaction privilege Tax, transaction Tax, conveyance fee, use Tax, stamp Tax, stock transfer Tax, real property transfer or real property excise Tax, or other similar Tax, including any related penalties, interest and additions thereto.

“Treasury Regulations” means the regulations (including temporary regulations) promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to Sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, similar or substitute, temporary or final Treasury Regulations.

[“Turbine Supply Agreement” means that certain [*insert turbine supply agreement title*] to be entered into between the Project Company and [*insert turbine supplier*], with respect to turbine supply for the Project, or any similar agreement in respect of the foregoing.]

“United States” or “U.S.” means the United States of America.

[“Wind Data” means all wind data actually generated for the Project, including without limitation by the Meteorological Towers, the Project Company, or its Affiliates in connection with the Project and all final third-party reports or studies regarding such data that are relevant to the use of any of the wind turbine generators installed or to be installed on or adjacent to the Site or the Real Property, in the possession or control of Seller or any of Seller’s Affiliates, in each case as amended, supplemented or updated from time to time.]

Section 1.2 Certain Interpretive Matters. In this Agreement, unless the context otherwise requires:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;
- (c) reference to any gender includes each other gender;
- (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
- (e) all Schedules and Exhibits attached to this Agreement constitute a part of this Agreement and are incorporated herein; *provided*, that the text of this Agreement and the Schedules and Exhibits hereto shall be construed consistently, but in the event of any irreconcilable conflicts the text of this Agreement shall control over any Schedule or Exhibit;
- (f) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit of or to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause or section means such clause or section of such Article, Section, Schedule, Exhibit or definition;
- (g) “hereunder,” “hereof,” “hereto” and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof;
- (h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;
- (i) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including;”
- (j) reference to any Law means such Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; and
- (k) any agreement, instrument, insurance policy, statute, regulation, rule or order defined or referred to herein or in any agreement or instrument that is referred to herein means such

agreement, instrument, insurance policy, statute, regulation, rule or order as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes, regulations, rules or orders) by succession of comparable successor statutes, regulations, rules or orders and references to all attachments thereto and instruments incorporated therein.

ARTICLE 2

PURCHASE AND SALE; CLOSING

Section 2.1 Purchase and Sale.

(a) Membership Interests. Upon the terms and subject to the satisfaction or waiver of the conditions contained in this Agreement, at the Closing, Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase and acquire from Seller, the Membership Interests free and clear of all Encumbrances.

Section 2.2 Consideration.

(a) Buyer shall pay to Seller the following amounts for the sale and conveyance of the Membership Interests to Buyer (together, the “Purchase Price”) as follows:

(i) Closing Date Payment. On the Closing Date, Buyer shall pay to Seller an amount equal to (A) \$[•] which Seller acknowledges and agrees constitutes full reimbursement for all costs and expenses incurred by Seller, the Project Company, or any of their respective Affiliates in connection with the development of the Project as of the Execution Date, *plus* (B) any reasonable and documented third-party costs incurred by Seller or the Project Company after the Execution Date and prior to the Closing Date pertaining to the continued development of Project, not to exceed \$[•] (collectively, the “Closing Payment”).

(ii) NTP Payment. Upon the issuance of Notice to Proceed, Buyer shall pay to Seller an amount equal to (A) \$[•] (the “NTP Payment”).

(iii) Project Substantial Completion Payment. On the achievement of Project Substantial Completion, Buyer shall pay to Seller the Project Substantial Completion Payment.

(b) All payments which comprise the Purchase Price shall be paid to Seller by wire transfer of immediately available funds to an account or accounts specified by Seller.

Section 2.3 Closing. The consummation of the Transaction (the “Closing”) will take place at the offices of Puget Sound Energy, Inc., 355, 110th Avenue Northeast Bellevue, WA 98004 at 10:00 a.m. local time or by electronic transmission as the Parties mutually agree on the date on which the conditions set forth in Article 7 (other than conditions with respect to actions that the Parties will take at the Closing itself) have either been satisfied or waived by the Party for whose benefit such conditions exist or at such other time and place as the Parties may agree in writing. The date on which the Closing actually occurs is referred to herein as the “Closing Date.”

Section 2.4 Closing Deliverables. At the Closing, and subject to the terms and conditions hereof:²

- (a) Seller shall deliver, or cause to be delivered, to Buyer the following:
 - (i) an assignment of the Membership Interests, substantially in the form of Exhibit A (“Assignment Agreement”), duly executed by Seller;
 - (ii) a certificate, executed on Seller’s behalf by an authorized representative of Seller, dated the Closing Date, to the effect that the conditions set forth in Section 7.1(b) and Section 7.1(c) have been satisfied by Seller;
 - (iii) a valid, properly completed IRS Form W-9, duly executed by Seller (or, if Seller is disregarded from its regarded owner for purposes of U.S. federal income tax, such regarded owner);
 - (iv) originals or, if originals are not available, legible copies of the Books and Records;
 - (v) a secretary’s certificate executed by Seller;
 - (vi) at Seller’s sole cost and expense, the Survey;
 - (vii) the Title Policy insuring the Real Property provided pursuant to Section 7.1(d) and in the amount of \$[•] and inclusive of the endorsements set forth in Section 6.6(b), with Seller responsible for the payment of the base premium and Buyer responsible for any endorsement fees;
 - (viii) a current and valid Phase I Environmental Site Assessment for the Site, which does not include any “Recognized Environmental Conditions” or any other impairments that would have an adverse effect on the Project in any material respect;
 - (ix) evidence reasonably satisfactory to Buyer that each agreement or arrangement set forth in Schedule 4.18, and any other agreement or arrangement meeting the criteria of Section 4.18, has been terminated and the Project Company has been fully released from all obligations and liabilities under such agreement or arrangement;
 - (x) executed resignation letters of all officers and managers from their respective positions with the Project Company, accompanied by a release of the Project Company from such officers of any claims or further remuneration;
 - (xi) [a Begun Construction Certificate, substantially in the form of Exhibit E, duly executed by Seller and dated as of the Closing Date;]³ and

² **Note to Draft:** Required closing deliverables subject to Buyer diligence.

³ **Note to Draft:** Include a Begun Construction Certificate if the date on which construction begins is relevant for federal income tax purposes, including for purposes of establishing (i) exception from the prevailing wage and apprenticeship requirements, (ii) eligibility for the begun construction safe harbor for the 10% energy community bonus credit, or (iii) eligibility for the ITC or PTC under Sections 48 or 45 (versus under Sections 48E or 45Y).

(xii) any other documents or instruments reasonably required by Buyer to consummate the Transaction and reasonably requested of Seller prior to the Closing Date.

(b) Buyer shall deliver, or cause to be delivered, to Seller the following:

(i) the Assignment Agreement, duly executed by Buyer;

(ii) the Closing Payment, by wire transfer in immediately available funds to the account or accounts specified by Seller;

(iii) a certificate, executed on Buyer's behalf by an authorized representative of Buyer, dated the Closing Date, to the effect that the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied by Buyer;

(iv) a secretary's certificate executed by Buyer; and

(v) any other documents or instruments reasonably required by Seller to consummate the Transaction and reasonably requested of Buyer prior to the Closing Date.

Section 2.5 Tax Treatment; Allocation for Tax Purposes. The Project Company is properly classified as an entity disregarded as separate from its owner for U.S. federal income Tax purposes, and as a result, the disregarded owner of the Project Company will be treated for U.S. federal income tax purposes (and applicable state and local tax purposes) as selling the Assets of the Project Company to Buyer in exchange for the Purchase Price, increased by any liabilities of the Project Company and any other items included in computing consideration for such purposes (the "Tax Consideration"). Seller and Buyer shall use commercially reasonable efforts to agree upon an allocation of the Tax Consideration among the Assets of the Project Company for U.S. federal income Tax purposes in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (the "Allocation"). If Seller and Buyer reach an agreement with respect to the Allocation, (a) the Parties shall use commercially reasonable efforts to update the Allocation in a manner consistent with Section 1060 of the Code following any adjustment to the Purchase Price pursuant to this Agreement; (b) Seller and Buyer shall, and shall cause their Affiliates to, file all Tax Returns (including United States Internal Revenue Service Form 8594) in a manner consistent with the Allocation, as adjusted, unless required to do so by a final determination as defined in Section 1313 of the Code; *provided, however*, that neither Party shall be unreasonably impeded in its ability and discretion to negotiate, compromise and/or settle any Tax Proceedings in connection with the Allocation; and (c) the Parties shall promptly inform one another of any challenge by any Governmental Authority related to the Allocation. If Seller and Buyer cannot agree on an Allocation of the Tax Consideration by no later than the 90th day following the Closing Date, then each Party shall be permitted to adopt its own Allocation of the Tax Consideration as it deems appropriate.

Section 2.6 Withholding. Seller, Buyer, and any agent of Seller or Buyer shall be entitled to deduct and withhold from the Purchase Price, or any other amounts (or any portion thereof) payable under this Agreement, such amounts as are required to be deducted and withheld under the Code or any other applicable Law. Any amounts so deducted and withheld shall be paid by the withholding Party to the applicable Governmental Authority and shall be treated for all purposes of this Agreement as having been paid to the Party to whom such amounts would otherwise have been paid.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as of the Execution Date and as of the Closing Date as follows:

Section 3.1 Organization and Existence. Seller (i) is duly formed, validly existing and in good standing under the Laws of [•], (ii) is qualified to do business in, and is in good standing in all jurisdictions in which its properties (or the character of its business) requires such qualification, except as would not have a material adverse effect on its ability to perform its obligations under this Agreement and (iii) has all requisite [limited liability company][corporate] power and authority to carry on its business as it is now being conducted.

Section 3.2 Execution, Delivery and Enforceability. Seller has full [limited liability company][corporate] power and authority to enter into, and to perform its obligations under, this Agreement. The execution, delivery and performance of this Agreement by Seller, and the consummation of the Transaction, have been duly and validly authorized by all necessary [limited liability company][corporate] action required on its part, and no other [limited liability company][corporate] action on its part is necessary to authorize this Agreement or to consummate the Transaction. This Agreement constitutes a valid and legally binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions.

Section 3.3 Membership Interests.

(a) As of Closing, Seller owns, and is the sole beneficial and record owner of, and has full power and authority to convey, 100% of the Membership Interests free and clear of all Encumbrances, other than Permitted Encumbrances contemplated by clause (b) of the definition thereof, and upon Closing, Seller will convey to Buyer good and valid title to the Membership Interests, free and clear of any Encumbrances, other than Permitted Encumbrances contemplated by clause (b) of the definition thereof.

(b) The Membership Interests have been duly authorized and validly issued, were not issued in violation of any Person's preemptive rights, and are fully paid and non-assessable (in each case to the extent such terms are applicable to limited liability companies under applicable Law). The Membership Interests constitute one hundred percent (100%) of the ownership interests in the Project Company.

(c) There is no outstanding subscription, option, warrant, purchase right, call or commitment of any kind or character relating to or entitling any Person (other than Buyer) to purchase or otherwise acquire the Membership Interests. There is no outstanding security, instrument or obligation that is or may be convertible into or exercisable or exchangeable for any Membership Interest or other ownership interest in the Project Company. Other than this Agreement, there are no contracts under which the Project Company may become obligated to sell or otherwise issue any Membership Interests in the Project Company.

Section 3.4 No Violation. [Subject to Seller obtaining the Seller Required Consents,] neither the execution and delivery by Seller of this Agreement, nor Seller's compliance with any provision hereof, nor Seller's consummation of the Transaction will:

(a) violate, or conflict with, or result in a breach of any provisions of the organizational documents of Seller;

(b) result in a material default (with or without notice or lapse of time or both) under, give rise to any right of termination, cancellation or acceleration under, or materially conflict with any of the terms of, any Material Project Contract or other agreement to which Seller is a party or by which any of its respective properties or Assets are bound, except for such defaults (or rights of termination or acceleration) as to which requisite waivers or consents have been obtained and furnished to Buyer;

(c) materially violate or conflict with any Law applicable to Seller or any judgment, ruling, order, writ, decree, stipulation or injunction of any Governmental Authority applicable to Seller; or

(d) give any Person the right to prevent, delay or otherwise interfere with the Transaction.

Section 3.5 Litigation. There is no Action pending or threatened in writing against or relating to Seller that would reasonably be expected to (a) materially impair the ability of Seller to perform its obligations under this Agreement or consummate the Transaction, (b) materially impair the ability of the Project Company or, to the Knowledge of Seller, any other party to a Material Project Contract, to perform its obligations under any Material Project Contract or (c) individually, or in the aggregate with any other Action, adversely affect the Project Company, or the Project in any material respect.

Section 3.6 Brokers. All negotiations relating to this Agreement and the Transaction have been carried on by Seller in such a manner as to not give rise to any valid claim against Buyer or the Project Company for a brokerage commission, finder's fee or other like payment to any Person.

Section 3.7 Bankruptcy; Solvency.

(a) Seller has not filed any voluntary petition in bankruptcy or been adjudicated as bankrupt or insolvent, filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any federal bankruptcy act, insolvency, or other debtor relief law, nor sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its properties. Seller has not been subject to any involuntary bankruptcy action or other petition by a third party seeking reorganization, liquidation, dissolution or similar relief under any federal or state bankruptcy act, insolvency, or other debtor relief law nor, to the Knowledge of Seller, has any such action or other petition been threatened against Seller.

(b) Seller is not now insolvent and will not be rendered insolvent by the sale of the Membership Interests under this Agreement. Immediately after giving effect to the consummation of the Closing: (i) Seller will be able to pay its Liabilities as they become due in the usual course of its business; (ii) Seller will not have unreasonably small capital with which to conduct its present or proposed business; (iii) Seller will have assets (calculated at fair market value) that exceed its Liabilities; and (iv) taking into account all pending and threatened litigation, final judgments against Seller in actions for money damages are not reasonably anticipated to be rendered at a time when, or in amounts such that, Seller will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum probable amount of such judgments

in any such actions and the earliest reasonable time at which such judgments might be rendered) as well as all other obligations of Seller.

Section 3.8 Consents. [Except for the Seller Required Consents,] Seller is not and will not be required to make any declaration or filing with, give any notice to, or to obtain any consent from, any Governmental Authority or other Person in connection with the execution and delivery of this Agreement or the consummation of the Transaction.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE PROJECT COMPANY

Seller represents and warrants to Buyer as of the Execution Date and as of the Closing Date as follows:

Section 4.1 Organization and Existence. The Project Company (a) is duly formed, validly existing and in good standing under the Laws of [•], (b) is qualified to do business in, and is in good standing in (i) the State of [•]⁴ and (ii) all other jurisdictions in which its properties (or the character of its business) require such qualification, except, solely with respect to clause (ii), as would not have a Material Adverse Effect and (c) has all requisite limited liability company power and authority to carry on its business as it is now being conducted and to own the Assets held by the Project Company.

Section 4.2 No Prior Business.

(a) Since the date of its formation, the Project Company has not conducted any business or acquired any property or asset, except in each case in connection with the development of the Project. The Project Company does not own any interest in any other Person.

Section 4.3 Managers and Bank Accounts. As of Closing, the Project Company does not have any managers, officers or directors. As of Closing, the Project Company does not have any bank accounts.

Section 4.4 No Violation. [Subject to Seller obtaining the Seller Required Consents,] neither the execution and delivery by Seller of this Agreement, nor Seller's compliance with any provision hereof, nor Seller's consummation of the Transaction will:

(a) violate, or conflict with, or result in a breach of any provisions of the organizational documents of the Project Company;

(b) result in a material default (with or without notice or lapse of time or both) under, give rise to any right of termination, cancellation or acceleration under, or materially conflict with any of the terms of, any Material Project Contract or other agreement to which the Project Company is a party or by which any of its properties or Assets are bound, except for such material defaults (or rights of termination or acceleration) as to which requisite waivers or consents have been obtained and furnished to Buyer;

⁴ **Note to Draft:** To reference state in which project is located.

(c) materially violate or conflict with any Law applicable to the Project Company or any judgment, ruling, order, writ, decree, stipulation or injunction of any Governmental Authority applicable to the Project Company; or

(d) give any Person the right to prevent, delay or otherwise interfere with the Transaction.

Section 4.5 Litigation. There is no Action pending or threatened in writing against or relating to the Project Company that could reasonably be expected to (a) materially impair the ability of the Project Company to perform its obligations under this Agreement or consummate the Transaction, (b) materially impair the ability of the Project Company or, to the Knowledge of Seller, any other party to a Material Project Contract, to perform its obligations under any Material Project Contract or (c) individually, or in the aggregate with any other Action, adversely affect the Project Company, or the Project in any material respect.

Section 4.6 Bankruptcy; Solvency. The Project Company has not filed any voluntary petition in bankruptcy or been adjudicated as bankrupt or insolvent, filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any federal bankruptcy act, insolvency, or other debtor relief law, nor sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its properties. The Project Company has not been subject to any involuntary bankruptcy action or other petition by a third party seeking reorganization, liquidation, dissolution or similar relief under any federal or state bankruptcy act, insolvency, or other debtor relief law, nor, to the Knowledge of Seller, has any such action or other petition been threatened against the Project Company.

Section 4.7 Tax Benefit; Tax Matters.

(a) The Project Company is the owner of the Project and all the Assets of the Project. Neither the Project, nor any portion of the Project, has been placed in service for federal income tax purposes (including Sections 168(k), 48, 48E, 45 or 45Y of the Code). Neither the Project, nor any property that is part of the Project, has been energized or synchronized to the electric transmission system. Critical pre-operational testing with respect to the Project has not been completed. Daily operations with respect to the Project have not commenced. No revenue has been generated from the sale of electricity output with respect to the Project.

(b) There has been no “original use” (within the meaning of Section 168(k) of the Code) of the Project or any property that is part of the Project. No property that is part of the Project has been used by any Person other than in the development, construction, or startup of the Project.

(c) All Renewable Energy Incentives attributable to, resulting from or arising in connection with the Project shall belong to Buyer. Neither Seller nor any Affiliate of Seller (i) has claimed any depreciation deductions, amortization deductions, Tax credits (including the ITC or PTC), or other deductions or allowances or (ii) has made or intends to make any election under Section 6417 or Section 6418 of the Code, in each with respect to the Project or any property that is part of the Project or the Assets of the Project Company.

(a) No portion of the basis of the property in the Project is attributable to “qualified rehabilitation expenditures” within the meaning of Section 47(c)(2)(A) of the Code.

(b) No portion of any property that is part of the Project or the assets associated with the Project has benefited from the proceeds of any grant or rebate program that would cause a reduction in the amount of the ITC or PTC with respect to the Project or the assets associated with the Project, and no application with respect to any such grant or rebate has been filed or submitted.

(c) No portion of the Project is or has been financed with proceeds of an issue of state or local governmental obligations, the interest on which is exempt from Tax under Section 103 of the Code (within the meaning of Sections 45(b)(3) and 48(a)(4) of the Code). No property that is part of the Project or the assets associated with the Project is or has been (i) “tax-exempt bond financed property” or “tax-exempt use property” within the meaning of Section 168 of the Code, (ii) imported property of the kind described in Section 168(g)(6) of the Code, or (iii) property used by a Person described in Section 50(b)(3) of the Code.

(d) The Project are located in their entirety in the United States.

(e) [No on-site construction of the Project has begun. There has been no work by laborers or mechanics employed by Seller, or any contractor or subcontractor, with respect to the Project at the Site.]⁵

(f) [The Project began construction for U.S. federal income tax purposes before [●]. The representations and warranties in the Begun Construction Certificate are true, accurate, and complete in all respects.]⁶

(g) [Reserved]⁷

(h) The transactions contemplated by this Agreement will not have an adverse effect on the continuing validity and effectiveness of any Tax exemption, Tax holiday or Tax abatement for which the Project is currently eligible.

(i) Except as set forth in Schedule 4.7(g), the site on which the Project is located has not been subject to a preferential or special property tax assessment, value limitation, or other favored Tax treatment. The site on which the Project is located is not, has not been, and will not be (as a result of the Closing) subject to roll-back Taxes.

(j) All Tax Returns that are required to have been filed by or with respect to the Project Company have been filed and all such Tax Returns are true, correct and complete in all material respects.

(k) All Taxes required to have been paid by or with respect to the Project Company, or for which the Project Company may otherwise be liable, have been timely paid.

⁵ **Note to Draft:** Include if the prevailing wage and apprenticeship requirements are expected to apply.

⁶ **Note to Draft:** Include if the date on which construction begins is relevant for federal income tax purposes, including for purposes of establishing (i) exception from the prevailing wage and apprenticeship requirements, (ii) eligibility for the begun construction safe harbor for the 10% energy community bonus credit, or (iii) eligibility for the ITC or PTC under Sections 48 or 45 (versus under Sections 48E or 45Y).

⁷ **Note to Draft:** Include representations on eligibility for the 10% energy community bonus credit and/or 10% domestic content bonus credit, if applicable.

(l) The Project Company has withheld or collected and paid over to the appropriate Governmental Authorities all Taxes required by applicable Law to be withheld or collected and the Project Company has properly received and maintained any and all certificates, forms and other documents required by applicable Law for any exemption from withholding and remitting any Taxes.

(m) No Tax audits or administrative or judicial proceedings are being conducted, pending or, to Seller's Knowledge, threatened in writing with respect to the Project Company, the Project, or the Assets of the Project or with respect to any Taxes of or relating to the Project Company.

(n) No claim or deficiency against or with respect to the Project Company for the assessment or collection of any Taxes has been asserted or proposed against or with respect to the Project Company, which claim or deficiency has not been settled with all amounts determined to have been due and payable having been timely paid in full.

(o) There are no liens (other than Permitted Encumbrances) on any of the Assets of the Project Company.

(p) For U.S. federal income Tax purposes (and, where applicable, state and local Tax purposes), the Project Company has at all times since its formation been properly classified as an entity disregarded as separate from its owner, and no election has been or will be filed or made to change such treatment and classification for U.S. federal income tax purposes (or where applicable state or local Tax purposes).

(q) The Project Company (i) has no liability for the Taxes of any other Person (A) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law) or (B) as a transferee or successor, and (ii) is not a party to, bound by or has any obligation or potential liability under any Tax allocation, sharing or indemnity agreement or arrangement, or under any other similar agreement or arrangement relating to Taxes, other than in the ordinary course of business.

(r) None of the Assets of the Project Company are subject to any tax partnership agreement or otherwise treated, or required to be treated, as held in an arrangement requiring a partnership income tax return to be filed under Subchapter K of Chapter 1 of Subtitle A of the Code.

(s) The Project Company has not at any time been a party to, or has any liability for the payment of any Tax resulting from a Person's participation, in any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4 (or any similar or corresponding provision of state or local Law).

(t) No written claim has been received by Seller or any of its Affiliates (including the Project Company) from a Governmental Authority in a jurisdiction where Tax Returns of a particular type are not filed by or with respect to the Project Company, the Project, or the Assets of the Project that the Project Company, the Project, or the Assets of the Project is or may be subject to such type of taxation by that jurisdiction.

(u) Seller (or if Seller is an entity disregarded as separate from its owner for federal income tax purposes, such regarded owner) is not a “foreign person” within the meaning of Section 1445 of the Code.

(v) The Project Company has not (i) entered into any agreement or waiver extending any statute of limitations with respect to Taxes that remains in effect, (ii) agreed to any extension of time with respect to a Tax assessment or deficiency that remains in effect, (iii) entered into any closing agreement, settlement agreement or other agreement with any Governmental Authority with respect to Taxes that will remain in effect after the Closing Date or (iv) requested or is the subject of or expressly bound by any private letter ruling, technical advice memorandum or similar ruling or memorandum with any Governmental Authority that remains in effect with respect to any Taxes, nor is any such request outstanding. No power of attorney granted by Developer with respect to the Project Company, the Project Assets, or the Project is currently in effect.

Section 4.8 Consents. [Except for the Project Company Required Consents], the Project Company is not and will not be required to make any declaration or filing with, give any notice to, or to obtain any consent from, any Governmental Authority or other Person in connection with the execution and delivery of this Agreement or the consummation of the Transaction.

Section 4.9 Project Assets. The Project Company has good and valid title to or valid and enforceable leasehold interests or licensed rights in, or enforceable rights under, as applicable, all of the Assets held by the Project Company, free and clear of Encumbrances, other than Permitted Encumbrances. Prior to the Closing, all Assets, Contracts, Permits and other entitlements primarily relating to the Project and held by any Affiliate of the of the Project Company, other than those set forth in Schedule 4.9, have been transferred to and are solely in the name of the Project Company. All tangible Assets owned or leased by the Project Company are adequately maintained and in a manner consistent with any applicable warranties and are in good operating condition and repair and free from any material defects, reasonable wear and tear excepted, are suitable for the uses for which they are being used. Collectively, the Assets currently held by the Project Company are sufficient for the development, construction and operation of the Project as contemplated by the Site Plans.

Section 4.10 Permits.

(a) Schedule 4.10(a) sets forth all material Permits that are held by the Project Company in connection with the development, construction, commissioning, and operation of the Project (the “Project Company Permits”). True and complete copies of all Project Company Permits have been made available to Buyer. All Project Company Permits listed on Schedule 4.10 applicable to the Project have been obtained in the name or on behalf of the Project Company, and are in full force and effect. To the Knowledge of Seller, no event has occurred and is continuing that reasonably would be anticipated to permit, or after notice or lapse of time or both reasonably would be anticipated to permit, any materially adverse modification, revocation, or termination of, or any other material change in, any Project Company Permit. Seller has not received written notice of any action, suit, investigation or proceeding with respect to the Project Company or the Assets held by the Project Company that could reasonably be anticipated to result in any material adverse modification, or the rescission, termination, or suspension of any Project Company Permit.

(b) Schedule 4.10(b) sets forth all material Permits that Seller or the Project Company have applied or filed for in relation to the Project as of the Execution Date that are not yet obtained (the “Requested Permits”). To Seller’s Knowledge, there are no facts or circumstances currently

in existence that would result in any Requested Permit not being granted in a timely manner or, if granted, containing conditions which, individually or in the aggregate, would reasonably be expected to adversely affect the Project in any material respect. Seller has provided or caused to be provided to Buyer true, correct and complete copies of all material written correspondence in their possession or control to or from any Governmental Authority in connection with the Requested Permits. There are no written claims or objections or actions or proceedings pending, and no claims or objections or proceedings have been threatened in writing, relating to any application for a Requested Permit.

(c) Part I of Schedule 4.10(c) sets forth all Closing Required Permits that are necessary (i) for all Real Property and (ii) for the use, development, construction and operation of the Project, but excluding any permits to be obtained by the Construction Contractor as set forth on Part II of Schedule 4.10(c) (the “Required Permits”). To Seller’s Knowledge, there are no facts or circumstances currently in existence that would result in the Required Permits being obtained on terms and conditions, including with respect to the timing of receipt thereof, which, individually or in the aggregate, would reasonably be expected to adversely affect the Project in any material respect. There are no Permits required for the use, development, construction or operation of the Project other than the Required Permits and the permits to be obtained by the Construction Contractor as set forth on Part II of Schedule 4.10(c).

(d) Neither the execution nor delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will result in the termination of any Project Company Permit or materially and adversely affect any application for a Requested Permit or other Required Permit.

Section 4.11 Material Project Contracts.

(a) Schedule 4.11 contains a true and complete list of (i) all Material Project Contracts other than the Real Property Documents, and (ii) any letters of credit or other security arranged by or on behalf of the Project Company and true and complete copies of each of the foregoing (including all amendments thereto through the Execution Date, and as updated as of the Closing Date) have been made available to Buyer.

(b) Each of the Material Project Contracts is in full force and effect in all material respects and constitutes a legal, valid and binding obligation of the Project Company and, to the Knowledge of Seller, of any other party thereto, except as such enforceability may be limited by the Enforceability Exceptions.

(c) Neither the Project Company, Seller, nor any Affiliate of Seller is in material breach of any provision of any Material Project Contract. To Seller’s Knowledge, no counterparty to a Material Project Contract is in material breach of any provision of any Material Project Contract. To Seller’s Knowledge, there are no events or circumstances currently in existence that with or without notice or the lapse of time or both, would contravene, conflict with or result in a material violation or material breach of or give any Person the right to declare a default or exercise any remedy under, or accelerate any obligation under, or to cancel, terminate or modify any Material Project Contract.

(d) Neither the Project Company, Seller, nor any Affiliate of Seller has delivered to, or received from, any party to any Material Project Contract a written notice of (i) termination, cancellation, repudiation, non-renewal or assertion of breach with respect to such Material Project

Contract, (ii) force majeure under such Material Project Contract, or (iii) breach of warranty or indemnification claim. There are no current renegotiations of, or attempts or requests to renegotiate or outstanding rights to renegotiate any Material Project Contract with any Person. Except as set forth in the Material Project Contracts, the Project Company has not sold or transferred, agreed or committed to sell or transfer, or granted any options or rights to purchase any of its Assets, including any electric power or Environmental Attributes in connection with or related to the Project.

Section 4.12 Real Property.

(a) Schedule 4.12 contains a complete and accurate list of each option, lease, sublease, deed, right-of-way, easement, surface use agreement, consent, license or other instrument covering the Real Property and either entered into, assigned to, or assumed by the Project Company (such documents, the “Real Property Documents”). As of the Closing Date, each Real Property Document is in full force and effect in all material respects, and constitutes a legal, valid and binding agreement, enforceable in accordance with its terms in all material respects, of the Project Company and, to the Knowledge of Seller, of each other party thereto, except as the same may be limited by the Enforceability Exceptions. The Project Company is not in material violation or material breach of or default under any such Real Property Document (or with notice or lapse of time or both, would be in material violation or material breach of or default under any such Real Property Document). To the Knowledge of Seller, the Real Property currently held by the Project Company constitutes all of the real property that is necessary for the development, construction, ownership and operation of the Project as contemplated by the Site Plans.

(b) There is no pending or, to the Knowledge of Seller, threatened condemnation (or similar proceedings) in writing of all or any part of the Project (nor has Seller or the Project Company received any written notice threatening condemnation), and neither Seller nor the Project Company has assigned or sublet or granted any rights to use and occupy or created any limitations to or on its interests in the Project to any Person except as expressly set forth in the Real Property Documents.

(c) The Project Company is in compliance with all material setback, building code, or zoning requirements currently applicable to the Project. To Seller’s Knowledge, there is no oil and gas, mining, mineral or water extraction, or development project contemplated, in progress or planned to commence on the Site or the Real Property, that would reasonably be expected to materially interfere with the development, construction, operation, maintenance, or performance of the Project as contemplated by the Site Plans.

(d) No interest in the Real Property is subject to a reversionary interest.

Section 4.13 Intangible Personal Property. Schedule 4.13 contains a true and complete list of all Intangible Personal Property owned, licensed to, or otherwise held by, the Project Company. The Project Company has good and valid title or license to, as applicable, all of the Intangible Personal Property described on Schedule 4.13 owned by or licensed to the Project Company. All such Intangible Personal Property is free and clear of all Encumbrances, other than Permitted Encumbrances. Other than the Project Company, neither Seller nor any of its other Affiliates owns, licenses, or otherwise holds any Intangible Personal Property necessary for the development, construction, operation, maintenance, or performance of the Project.

Section 4.14 Environmental Matters.

(a) The Project Company and the Project are and have been in compliance with all applicable Environmental Laws. Neither Seller (with respect to the Project or the Project Company) nor the Project Company is (i) subject to any outstanding Order under any Environmental Laws, (ii) in receipt of any written request for information, notice, threat, allegation, complaint, or claim with respect to any violation of, liability under or non-compliance with any Environmental Law or any condition that could reasonably be expected to form the basis of a claim under any applicable Environmental Law from any Person or Governmental Authority, or (iii) a party to or, threatened in writing with, any Action under or pursuant to any Environmental Law.

(b) Hazardous Substances have not been stored, used, disposed of or Released by the Project Company or any other Person on, under, from or to the Site or the Real Property under circumstances that would reasonably be expected to result in any liability or obligation under any Environmental Law to investigate, remediate or clean-up any such Hazardous Substances or to notify any Governmental Authority or Person about the Release, and no Hazardous Substances pose an imminent threat of Release at, on, into, or from the Site or the Real Property other otherwise by the Project Company.

(c) The Project Company has not engaged in the unpermitted taking of any species listed as endangered or threatened or otherwise protected under any Environmental Law applicable to the Project Company, the Project, or of the habitat of any such species, in any way related to the development or construction of the Project.

(d) The Project Company has not performed any act or failed to perform any legally required act which reasonably would be expected to give rise to, or has otherwise incurred, material liability to any Person (Governmental Authority or not) under any Environmental Laws.

(e) Seller has made available to Buyer true, correct and complete copies of all reports, site assessments, audits, studies, and other written analyses owned by, in the possession of or otherwise available to Seller describing or relating to the environmental or safety conditions at the Site and the Real Property, including with respect to the presence or potential presence of Hazardous Substances, wetlands, and protected species or protected resources, or aeronautical safety.

Section 4.15 Employee Matters. The Project Company (a) has never had and does not have any employees, and (b) does not participate in, sponsor, maintain, or contribute to, or have any direct or indirect liability, whether contingent or otherwise, with respect to, any Plan or other arrangement providing for employee benefits. Neither the Project Company nor any of its ERISA Affiliates, has any liability with respect to a “multiemployer plan” within the meaning of Section 3(37) of ERISA, that would result in the imposition of any liability on Buyer or any of its Affiliates following the Closing (including the Project Company). No circumstances exist that would result in any liability to Buyer or its Affiliates under Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA. “ERISA Affiliates” means any trade or business (whether or not incorporated) that is treated as a single employer with Seller within the meaning of Section 414(b), (c), (m) or (o) of the Code.

Section 4.16 No Undisclosed Liabilities.

(a) The Project Company does not have any material liabilities, obligations or commitments (whether absolute, accrued, contingent or otherwise) except those which (i) are evidenced by this Agreement, the Permits, the Real Property Documents and the Material Project Contracts (none of which is a liability for breach, default or noncompliance), or (ii) have been incurred in the ordinary course of business in connection with the development of the Project consistent with past practice and do not, individually or in the aggregate, exceed \$50,000.

(b) Since its formation, (i) the Project Company has operated in all material respects in the ordinary course of business, (ii) to Seller's Knowledge, there has not been any event or occurrence that, individually or in the aggregate, has adversely affected the Project Company[,][or] the Project in any material respect, and (iii) the Project Company has not taken, and has not failed to take, any action that, if taken or failed to be taken after the Execution Date, would be prohibited by Section 6.5.

Section 4.17 Indebtedness. The Project Company does not have any outstanding Indebtedness.

Section 4.18 Affiliate Transactions. Schedule 4.18 sets forth, as of the Execution Date, each agreement or arrangement to which Seller or any Affiliate (other than the Project Company) is a party that involves the Project or to which the Project Company is a party. As of the Closing Date, other than as contemplated by this Agreement, (i) each agreement or arrangement set forth on Schedule 4.18 has been terminated and the Project Company has been released from all liability and obligations thereunder and (ii) neither Seller nor any Affiliate or Representative of Seller (other than the Project Company) is party to any agreement or arrangement with or involving the Project Company, or involving the Project.

Section 4.19 FERC and State Energy Regulation. Neither Seller nor the Project Company are subject to regulation under the FPA or PUHCA. The Project Company (a) has not taken any action that would require any of the Parties hereto to obtain FERC authorization under Section 203 of the FPA to consummate the Transaction and (b) is not subject to regulation by the FERC or any state public service commission as a "public utility," "electric utility," "electric company," "electrical corporation," "holding company," or similar term under any applicable federal or state Law relating to public utilities.

Section 4.20 OFAC: UFLPA. Seller represents and warrants that it is in compliance with the requirements of Executive Order No. 13224, 66 Fed Reg. 49079 (September 25, 2001) and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury and in any enabling legislation or other executive orders in respect thereof. Seller and the Project Company have complied in all material respects with the Uyghur Force Labor Prevention Act (Pub. L. 117-78 (2021)) and have caused any subcontractors or service providers of Seller and/or the Project Company to comply with the same.

Section 4.21 Information. To Seller's Knowledge, Seller has made available to Buyer (i) all documents and information set forth in the schedules and (ii) all other documents or information in Seller's or its Affiliate's possession or control related to the Project, the Project Company or the Real Property that could reasonably be expected to be material to the Project, the Project Company, the Real Property or the Transaction.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as of the Execution Date and as of the Closing Date as follows:

Section 5.1 Organization and Existence. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of Washington and has all requisite power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is qualified to do business in any other jurisdiction where the consummation of the Transaction requires such qualification, except where failure to qualify would not prevent Buyer from performing its obligations hereunder in any material respect.

Section 5.2 Execution, Delivery and Enforceability. Buyer has full power to enter into, and to carry out its obligations under, this Agreement and to consummate the Transaction. The execution, delivery and performance of this Agreement and the consummation of the Transaction, have been duly and validly authorized by all necessary action required on the part of Buyer and no other actions on the part of Buyer are necessary to authorize this Agreement or to consummate the Transaction. This Agreement constitutes the valid and legally binding obligations of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions.

Section 5.3 No Violation. [Subject to Buyer obtaining the Buyer Required Consents,] neither the execution and delivery by Buyer of this Agreement, nor Buyer's compliance with any provision hereof or thereof, nor Buyer's consummation of the Transaction will:

- (a) violate, or conflict with, or result in a breach of any provisions of the organizational documents of Buyer;
- (b) result in a material default (or give rise to any right of termination, cancellation or acceleration) or give any Person the right to declare a default or exercise any remedy (with or without notice or lapse of time or both) under, or materially conflict with any of the terms, conditions or provisions of, or result in any payment or loss of benefit under, any note, bond, mortgage, indenture, license, contract, or agreement or other instrument or obligation to which Buyer is a party or by which it may be bound; or
- (c) materially violate or conflict with any Law applicable to Buyer or any judgment, ruling, order, writ, decree, stipulation or injunction of any Governmental Authority applicable to Buyer; or
- (d) give any Person the right to prevent, delay or otherwise interfere with the Transaction.

Section 5.4 Litigation. There is no Action pending or, to Buyer's Knowledge, threatened against or relating to Buyer or its Affiliates that either has resulted or would result, if successfully asserted, in a material impairment of Buyer's ability to perform its obligations hereunder or to consummate the Transaction.

Section 5.5 Brokers. All negotiations relating to this Agreement and the Transaction on behalf of Buyer have been carried on by Buyer in such a manner as not to give rise to any valid claim against Seller for a brokerage commission, finder's fee or other like payment to any Person.

Section 5.6 Consents. Other than a notice filing to the Washington Utilities and Transportation Commission, [and the Buyer Required Consents,] Buyer is not and will not be required to make any declaration or filing with, give any notice to, or to obtain any consent from, any Governmental Authority or other Person in connection with the execution and delivery of this Agreement or the consummation of the Transaction.

Section 5.7 Bankruptcy. Buyer has not filed any voluntary petition in bankruptcy or been adjudicated as bankrupt or insolvent, filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any federal bankruptcy act, insolvency, or other debtor relief law, nor sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its properties. Buyer has not been subject to any involuntary bankruptcy action or other petition by a third party seeking reorganization, liquidation, dissolution or similar relief under any federal or state bankruptcy act, insolvency, or other debtor relief law nor, to the Knowledge of Buyer, has any such action or other petition been threatened against Buyer.

ARTICLE 6 COVENANTS OF EACH PARTY

Section 6.1 Regulatory Approvals. Each of Buyer and Seller shall promptly apply for and take all reasonably necessary actions to obtain or make all declarations and filings with, and notices to, any Governmental Authority or other Person required to be obtained or made by it for the consummation of the Transaction. Each Party shall cooperate with and promptly furnish information to the other Party reasonably necessary in connection with any requirements imposed upon such other Party in connection with the consummation of the Transaction.

Section 6.2 Tax Matters.

(a) **Tax Returns.** Seller shall prepare or cause to be prepared and file or cause to be filed all Tax Returns required to be filed by or with respect to the Project Company on or prior to the Closing Date. Except for Tax Returns for Transfer Taxes required to be prepared and filed by Seller as set forth in Section 6.2(d), Buyer shall prepare or cause to be prepared and file or cause to be filed all Tax Returns required to be filed by or with respect to the Project Company after the Closing Date. With respect to any Tax Return covering a taxable period beginning on or before the Closing Date and ending after the Closing Date (a "Straddle Period") that is required to be filed after the Closing Date with respect to the Project Company, Buyer shall cause such Tax Return to be prepared in a manner consistent with practices followed in prior taxable periods except as required by applicable Law. Buyer shall cause such Tax Return to be executed and duly and timely filed with the appropriate Governmental Authority and shall (without limiting, and without duplication of, Buyer's right to indemnity under Section 8.2(e)) pay all Taxes shown as due and payable on such Tax Return and will provide a copy thereof to Seller. Seller shall reimburse Buyer for the amount of any such Taxes that are Seller Taxes within five (5) days after Buyer provides Seller with such copy of such Tax Return. For purposes of this Agreement, with respect to Taxes attributable to a Straddle Period, Seller and Buyer shall determine the Tax attributable to the portion of the taxable period that ends on the Closing Date by an interim closing of the books of the Project Company, except for ad valorem or property Taxes ("Property Taxes"), which shall be prorated on

a daily basis through and including the Closing Date. Property Taxes shall be determined without regard to any increased assessment resulting from the transactions contemplated by this Agreement, or the development or construction of the Project after the Closing Date.

(b) Cooperation. Buyer and Seller shall cooperate fully as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any inquiry, claim, assessment, audit, litigation or other proceeding (each a “Tax Proceeding”) with respect to Taxes imposed on or with respect to the Assets, operations or activities of the Project Company. Such cooperation shall include the retention and (upon the other Party’s request) the provision of records and information which are reasonably relevant to any such Tax Returns or Tax Proceedings and making Representatives and agents available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

(c) Tax Proceedings. Following the Closing, if Buyer or any of its Affiliates (including the Project Company) receives notice of any Tax Proceeding related to Seller Taxes for which Seller has an obligation to indemnify a Buyer Indemnified Party hereunder (an “Indemnified Tax Claim”), Buyer shall promptly notify Seller in writing regarding such notice. Seller shall have the right to elect to control, manage, defend against, negotiate, settle or otherwise deal with (at the expense of Seller) any Indemnified Tax Claim; provided that (a) Buyer shall have the right to participate in any such Indemnified Tax Claim at its own expense, (b) Seller shall keep Buyer reasonably informed of the status of such Indemnified Tax Claim and (c) Seller shall not settle, compromise or resolve such Indemnified Tax Claim without the prior written consent of Buyer (not to be unreasonably withheld, conditioned or delayed). If Seller chooses not to control, manage, defend against, negotiate, settle or otherwise deal with such Indemnified Tax Claim, then (x) Buyer shall control, manage, defend against, negotiate, settle or otherwise deal with such Indemnified Tax Claim, (y) Buyer shall keep Seller reasonably informed of the status of such Indemnified Tax Claim, and (z) Buyer shall not settle, compromise or resolve such Indemnified Tax Claim without the prior written consent of Seller (not to be unreasonably withheld, conditioned or delayed).

(d) Transfer Taxes. All Transfer Taxes arising out of or in connection with the Transaction shall be borne by Seller. Seller shall prepare and file all Tax Returns for any Transfer Taxes and shall remit the Transfer Taxes shown as due on each such Tax Return (except where such Tax Returns are required to be filed by Buyer under applicable Law, in which case Buyer shall be responsible for the preparation and filing of such Tax Returns, and the payment of such Transfer Taxes). Upon Buyer’s payment of any Transfer Taxes to any Governmental Authority, Seller shall promptly pay or reimburse Transfer Taxes to Buyer. Buyer and Seller shall cooperate in good faith to minimize, to the extent permissible under applicable Law, the amount of any such Transfer Taxes.

Section 6.3 Announcements. Following the Execution Date until the date that is six (6) months after Closing, no press release or other public announcement, or public statement or comment in response to any inquiry, relating to the Transaction shall be issued or made by Buyer or Seller (or their respective Affiliates) without the joint approval of Buyer and Seller. A press release or other public announcement, regulatory filing, statement or comment made without such joint approval shall not be in violation of this Section 6.3 if it is made in order for the disclosing Party or any of its Affiliates to (a) obtain permits, licenses and other approvals relating to the Project, as are necessary in order to fulfill such Party’s obligations under this Agreement or (b) comply with applicable Laws or stock exchange rules and in the reasonable judgment of the Party making such release or announcement, based upon advice of counsel, prior review and joint approval, despite reasonable efforts to obtain the same, would prevent

dissemination of such release or announcement in a sufficiently timely fashion to comply with such Laws or rules; *provided*, that in all such instances prior notice from Buyer or Seller to the other Parties be given with respect to any such release, announcement, statement or comment.

Section 6.4 Further Assurances. At any time or from time to time, each Party will, upon the reasonable request of another Party, execute and deliver any further instruments or documents as may reasonably be required, to fulfill and implement the Transaction. Further, subject to the terms and conditions set forth herein and to applicable legal requirements, the Parties shall work in good faith and use commercially reasonable efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, and assist and cooperate with the other Party in consummation of the Transaction, including (i) each Party taking such commercially reasonable actions as may be required to cause the satisfaction of the conditions set forth in Article 7 required to be met by such Party and (ii) Seller taking such commercially reasonable actions as may be required to cause the satisfaction of the conditions set forth on Exhibit B.

Section 6.5 Conduct of Business. Following the Execution Date and prior to the Closing, Seller shall cause the Project Company to conduct its business in the ordinary course, consistent with past practice and Industry Practices; *provided*, that Seller shall not, and shall cause the Project Company not to, take any of the following actions without the prior written consent of Buyer, such consent not to be unreasonably withheld, conditioned or delayed:

- (a) enter into any Construction and Equipment Agreement, or enter into, terminate or materially amend (i) any Permit or (ii) any Material Project Contract (other than any Material Project Contracts entered into in the ordinary course which will be fully performed prior to Closing);
- (b) incur, or commit to incur, any costs that are reimbursable under Section 2.2(a)(i)(B);
- (c) grant any waiver of any term under, exercise any option under, or give any consent with respect to, any Material Project Contract;
- (d) take any action that could reasonably be expected to result in a material breach or default under any Material Project Contract or Permit;
- (e) initiate, settle, waive, unwind, amend or modify any Action, dispute or claim or compromise or settle any liability (other than accounts payable, Taxes and other liabilities payable in the ordinary course of business) which results in a non-current liability of [•] dollars (\$[•]) or greater becoming due from the Project Company after Closing or restrictions or limitations that materially and adversely affect the Project Company's ability to conduct business after the Closing;
- (f) sell, transfer, assign, license, mortgage, pledge, lease, sublease, convey or otherwise dispose of any material Assets held by the Project Company;
- (g) merge or consolidate with any other Person or adopt any plan of dissolution or liquidation, or make any voluntary bankruptcy or insolvency filing (or consent to any such involuntary filing) or reorganization;
- (h) incur or assume any Encumbrances other than the Permitted Encumbrances related to the Project Company or Assets held by the Project Company;

(i) admit any new member, manager or holder of membership interests or other Membership Interests;

(j) issue, reserve for issuance, transfer, modify, encumber, dispose or sell or grant or redeem any Membership Interests, or any options, warrants, calls or other rights to purchase or otherwise acquire any Membership Interests or any other equity interests in the Project Company;

(k) other (i) than accounts payable incurred in the ordinary course of business (which, for sake of clarity, includes accounts payable incurred in connection with the expected and normal course of performance under the Material Project Contracts) or (ii) short term, unsecured borrowings or intercompany loans or guarantees that are paid in full and discharged prior to the Closing Date, incur, create, assume or otherwise become liable for any Indebtedness or issue any debt securities or assume or guarantee the obligations of any other Person;

(l) acquire (by merger, consolidation or acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or division thereof or collection of Assets constituting all or substantially all of a business or business unit;

(m) make, revoke, or change any Tax election, change any Tax accounting methods, policies or practices; file any amended Tax Return or claim for refund, enter into any closing agreement, settle or otherwise compromise any Tax claim or assessment relating to the Project Company or the Assets held by the Project Company; file any request for rulings or special Tax incentives with any Governmental Authority; surrender any right to claim a refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Project Company or the Assets held by the Project Company; enter into any Tax allocation, sharing, reimbursement or indemnity agreement, or take any other similar action;

(n) change or authorize any change in the organizational documents of the Project Company;

(o) except as may be required to meet the requirements of applicable Laws or GAAP, change any accounting method or practice in a manner that is inconsistent with past practice;

(p) fail to discharge any material liability of the Project Company or make any material payment of the Project Company as it comes due except in connection with a good faith dispute with an adequate reserve in accordance with GAAP;

(q) With respect to the Project Company, hire any employees, officers, directors, or managers or incur any employment-related liability; or

(r) agree or commit to do any of the foregoing.

Section 6.6 Title Matters. Seller shall deliver, or cause to be delivered, to Buyer:

(a) On or prior to Closing, a title policy in the face amount \$[•] from a nationally recognized title insurance company acceptable to Buyer (the “Title Company”) on the current ALTA form in such amount showing good and valid fee, leasehold and easement interests, as applicable, in the Real Property, free and clear of all Encumbrances or exceptions to title, except

for Permitted Encumbrances and including all of the endorsements listed in Section 6.6(b) to the extent such endorsements are available based on the Survey (the “Title Policy”); and

(b) On or prior to Closing, at Seller’s sole cost and expense, an ALTA/NSPS survey of the Real Property substantially in the form of the survey entitled “EXHIBIT I – Survey” delivered by Representatives of Seller on behalf of Seller to Buyer on [], with such changes as Buyer has previously requested in its title and survey objection letter dated [] and shall make commercially reasonable efforts to accommodate such additional changes as may hereafter be reasonably requested by Buyer, in each case, without an anticipated project overlay, and which can be accommodated by the surveyor without additional cost or material delays (the “Survey”), certified to Buyer and the Title Company, and sufficient to bind an owner’s policy of title insurance issued by the Title Company containing the following endorsements (or endorsements of equivalent coverage) applicable to the entirety of the Real Property: ALTA 3.0 (Zoning) or, if available, ALTA 3.2 (Zoning Land Under Development); ALTA 8.2 (Commercial Environmental Lien); ALTA 9.9 (Private Rights); ALTA 15.06 (Nonimputation); ALTA 17 (Access); ALTA 18 (Tax Parcel); ALTA 19 (Contiguity); ALTA 22 (Location); ALTA 25 (Same as Survey); ALTA 26 (Subdivision); ALTA 39 (Policy Authentication); deletion of arbitration; and such other endorsements as Buyer may request as applicable to the Real Property.

Section 6.7 Reliance Letters. Upon the reasonable request of Buyer, Seller shall use commercially reasonable efforts to obtain customary reliance letters with respect to any third-party reports, memoranda or other work products that have been prepared by any third-parties in respect of the Project. The costs of any out-of-pocket third-party expenses incurred by or on behalf of Seller in connection with such efforts shall be borne equally by the Parties.

Section 6.8 [Construction and Equipment Agreements Cooperation. Following the Execution Date and prior to the Closing, the Parties agree to cooperate in good faith and use commercially reasonable efforts to cause each of the Construction Agreement, [Turbine Supply Agreement], and [*insert any other relevant agreements*] (the “Construction and Equipment Agreements”) to reach an agreed form with their respective counterparties in satisfaction of the requirements set forth in Item 1 of Exhibit B to this Agreement. Without limiting the generality of the foregoing, Seller agrees to perform the following actions (at its own expense): (a) promptly furnish information received from any potential counterparty to the Construction and Equipment Agreements to Buyer; (b) make applicable representatives available for the negotiation of the Construction and Equipment Agreements and invite and include applicable representatives from Buyer in any negotiations of or discussions with respect to the Construction and Equipment Agreements, (c) provide lists of contact persons at potential Construction and Equipment Agreement counterparties, (d) respond in a timely fashion to any requests or inquiries made Buyer or a potential Construction and Equipment Agreement counterparty and (e) use commercially reasonable efforts to allow for Buyer and its counsel to be present at all substantive meetings and phone calls any proposed or prospective Construction and Equipment Agreement contractors.]⁸

Section 6.9 Pre-Closing Access to Information. Seller shall, prior to the Closing Date, furnish or cause to be furnished to Buyer and its Representatives upon notice of at least three (3) Business Days, (a) at reasonable times, access to the Project, the Site and the Assets held by the Project Company as Buyer reasonably requests and (b) access to the Books and Records and other information of the Project Company as Buyer reasonably requests.

⁸ **Note to Draft:** To be included if construction / supply agreements are not yet executed.

Section 6.10 Certain Notices. Seller shall, prior to the Closing Date, provide Buyer with written notice of (i) any breach of this Agreement by Seller or (ii) any other circumstance that could reasonably be expected to materially impair the ability of the Parties to consummate the Transaction, in each case, within three (3) Business Days of Seller's becoming aware of such breach or circumstance, as applicable.

Section 6.11 Subsequent Project Wake Effects. From and after the Execution Date, Seller shall not, and shall cause its Affiliates not to (a) in connection with any Subsequent Project, develop, construct or operate any wind turbines within a two (2) mile radius of any wind turbines associated with the Project, or take any other action that would be reasonably likely to result in a Subsequent Project Wake Liability, or (b) sell, convey, or otherwise transfer any leasehold interest or other development right within a two (2) mile radius of any wind turbines associated with the Project, unless such Person agrees to abide by the requirements of clause (a) of this Section 6.11.

ARTICLE 7 CONDITIONS TO CLOSING

Section 7.1 Buyer's Conditions to Closing. The obligation of Buyer to consummate the Transaction shall be subject to satisfaction or, to the extent permitted by applicable Law, waiver by Buyer at or prior to the Closing of the following conditions:⁹

- (a) Ready for NTP. The Project shall have achieved the Ready for NTP State.
- (b) Representations and Warranties. The representations and warranties of Seller and Project Company set forth in Article 3 and Article 4 shall be true and correct in all material respects (other than the Seller Fundamental Representations, which shall be true and correct in all respects) as of the Closing Date (or if such representations and warranties expressly relate to a specific date, as of such specific date).
- (c) Compliance with Provisions. Seller shall have performed or complied in all material respects with all covenants and agreements contained in this Agreement on its part required to be performed or complied with at or prior to the Closing.
- (d) Seller Closing Deliveries. Seller shall have delivered, or caused to be delivered, to Buyer each of the agreements, documents and other instruments required to be made or delivered by it to Buyer at the Closing pursuant to Section 2.4(a).
- (e) No Restraint. There shall be no injunction, restraining order or order of any nature issued by any Governmental Authority of competent jurisdiction over Seller or Law which materially restrains, enjoins or otherwise prohibits or makes illegal the Transaction.
- (f) Required Consents. The [Buyer Required Consents][Seller Required Consents][Project Company Required Consents]¹⁰ shall have been obtained, shall be final, non-appealable and in full force and effect, and shall be in form and substance reasonably satisfactory to Buyer.

⁹ **Note to Draft:** Conditions to closing subject to Buyer diligence.

¹⁰ **Note to Draft:** To include all applicable consents.

(g) [Transmission Rights]. The Transmission Rights shall have been secured in the name of Buyer.]

(h) No Litigation. There is no Action pending that individually, or in the aggregate with any other Action, would adversely affect either Party's ability to perform its obligations hereunder in any material respect.

(i) No Material Adverse Effect. No Material Adverse Effect shall have occurred and be continuing.

(j) Owner's Pro Forma Title Policy Based on Site Plan Overlay on Survey. Buyer shall have received (i) a copy of the Survey from Seller with the proposed project layout overlaid on such Survey; and (ii) an owner's pro forma title policy for the Real Property from the Title Company based on such overlaid project layout for the amount of the improved project value and containing, in addition to the endorsements listed in Section 6.6(b), the following endorsements: ALTA 28 (Easements); ALTA 31 (Severable Improvements); ALTA 36.4 (Energy Project – Covenants, Conditions, Restrictions); and ALTA 36.6 (Energy Project – Encroachments); provided that such owner's pro forma policy will be provided by the Title Company without cost and will merely set forth the then current position of the Title Company should Buyer request, at its expense, an owner's title policy at NTP or thereafter; but provided further, however, that Buyer may require the foregoing endorsements to be included in the Title Policy at Closing, if such endorsements are available from the Title Company for (x) the Title Policy for the insured amount of \$[•] or (y) a title policy with a higher insured amount for the Real Property, so long as Buyer agrees to pay the difference between the cost of the base premium for such title policy and the cost of the base premium for the Title Policy under Section 2.4(a)(vii) (for which Seller is responsible), in which event the "Title Policy" shall thereafter be deemed to reflect such higher insured amount for the Real Property.

Notwithstanding the foregoing, Buyer may not rely on the failure of any condition set forth in this Article 7 to be satisfied if such failure (a) resulted from an action or inaction on the part of Seller or its Affiliates that was requested or consented to in writing by Buyer or (b) was primarily caused by the failure of Buyer to comply in any material respect with its obligations under this Agreement. In addition to the foregoing, the Parties acknowledge and agree that no mineral right surface waivers will be provided or required as a condition to Closing.

Section 7.2 Seller's Conditions to Closing. The obligation of Seller to consummate the Transaction shall be subject to satisfaction or, to the extent permitted by applicable Law, waiver by Seller at or prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of Buyer set forth in Article 5 shall be true and correct in all material respects (other than the Buyer Fundamental Representations, which shall be true and correct in all respects) as of the Closing Date (or if such representations and warranties expressly relate to a specific date, as of such specific date).

(b) Compliance with Provisions. Buyer shall have performed or complied in all material respects with all covenants and agreements contained in this Agreement on its part required to be performed or complied with at or prior to the Closing.

(c) Buyer Closing Deliveries. Buyer shall have made, or caused to be made, each of the payments and delivered, or caused to be delivered, to Seller each of the agreements, documents and other instruments required to be made or delivered by it to Seller at the Closing pursuant to Section 2.4(b).

(d) No Restraint. There shall be no injunction, restraining order or order of any nature issued by any Governmental Authority of competent jurisdiction over the Parties or Law which restrains, enjoins or otherwise prohibits or makes illegal the Transaction.

(e) Required Consents. The [Buyer Required Consents][Seller Required Consents][Project Company Required Consents]¹¹ shall have been obtained, shall be in full force and effect, shall be in form and substance reasonably satisfactory to Seller.

(f) No Litigation. There is no Action pending that individually, or in the aggregate with any other Action, would adversely affect either Party's ability to perform its obligations hereunder in any material respect.

Notwithstanding the foregoing, Seller may not rely on the failure of any condition set forth in this Article 7 to be satisfied if such failure (a) resulted from an action or inaction on the part of Buyer or its Affiliates that was requested or consented to in writing by Seller or (b) was primarily caused by the failure of Seller to comply in any material respect with its obligations under this Agreement.

ARTICLE 8 INDEMNIFICATION

Section 8.1 Exclusive Remedies. From and after Closing, the rights and remedies set forth in this Article 8 shall be the exclusive remedies for the Seller Indemnified Parties and the Buyer Indemnified Parties (a) for any breach of the other Party's representations, warranties, covenants, or agreements contained in this Agreement or (b) otherwise with respect to this Agreement, the agreements and instruments executed in connection herewith or the Transaction.

Section 8.2 Indemnification by Seller. Subject to Section 8.5(b), Section 8.5(c) and Section 10.1(a), from and after the Closing, Seller will indemnify, defend and hold harmless Buyer and its Affiliates and each of their officers, directors, employees, attorneys, agents and successors and assigns (collectively, the "Buyer Indemnified Parties") from and against any and all demands, suits, penalties, obligations, damages, claims, losses, liabilities, payments, Taxes (including any reductions in or inability to claim Renewable Energy Incentives), out-of-pocket costs and expenses, including reasonable legal, accounting and other expenses in connection therewith and costs and expenses incurred in connection with investigations and settlement proceedings ("Losses") arising out of the following (collectively, "Buyer Claims"):

(a) any breach of any of the representations or warranties made by Seller in Article 3 or Article 4 or in any Transaction Document;

(b) any breach or violation of any covenant or agreement of Seller in this Agreement or any Transaction Document;

¹¹ **Note to Draft:** To include all applicable consents.

(c) any fraud, gross negligence or willful misconduct by Seller in connection with this Agreement or the Transaction;

(d) any Third Party Claim (before or after the Closing Date) brought against any Buyer Indemnified Party to the extent arising out of the acts or omissions of Seller or the Project Company prior to the Closing Date; or

(e) Seller Taxes.

Section 8.3 Indemnification by Buyer. Subject to Section 8.5(b), Section 8.5(c) and Section 10.1(a), from and after the Closing, Buyer will indemnify, defend and hold harmless Seller and their Affiliates and each of their officers, directors, employees, attorneys, agents and successors and assigns (collectively, the “Seller Indemnified Parties”), from and against any and all Losses arising out of the following (collectively, “Seller Claims”):

(a) any breach of any of the representations or warranties made by Buyer contained in Article 5 or in any Transaction Document;

(b) any breach or violation of any covenant or agreement of Buyer set forth in this Agreement;

(c) any fraud, gross negligence or willful misconduct by Buyer in connection with this Agreement or the Transaction; or

(d) any Third Party Claim (before or after the Closing Date) brought against any Seller Indemnified Party to the extent arising out of the acts or omissions (or otherwise in connection with the operations of the Project) of Buyer or the Project Company after the Closing Date.

Section 8.4 Indemnification Procedure.

(a) Other than with respect to any third party claim as provided in Section 8.4(b), promptly after an Indemnified Party receives notice or otherwise becomes aware of an event giving rise to a Buyer Claim or Seller Claim (each, a “Claim”) with respect to which the Indemnified Party is entitled to indemnification under Section 8.2 or Section 8.3, as applicable, the Indemnified Party receiving such notice or so becoming aware shall notify Seller or Buyer, as applicable (in such instance, the “Indemnifying Party”), in writing (the “Claim Notice”) of the assertion of such Claim; *provided*, that failure to give such notice shall not affect the right to indemnification hereunder except to the extent of actual prejudice to the Indemnifying Party. Each Claim Notice (a) shall contain a brief description of the facts and circumstances supporting the applicable Claim and (b) shall, to the extent reasonably practical, contain a good-faith, non-binding, preliminary estimate of the amount of Losses such Indemnified Party claims to have suffered or could potentially incur or suffer (the “Claimed Amount”) and the method of computation thereof. Within ten (10) Business Days after receipt by the Indemnifying Party of a such indemnification notice, such Indemnifying Party may deliver to the Indemnified Person a written response (the “Response Notice”) in which such Indemnifying Party: (a) agrees that the Indemnified Person is entitled to the full Claimed Amount, (b) agrees that the Indemnified Person is entitled to part, but not all, of the Claimed Amount, or (c) indicates that the Indemnifying Party disputes 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 ten (10) Business Day

period, then the Indemnifying Party shall be conclusively deemed to have accepted the full Claimed 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.

(b) Promptly after an Indemnified Party receives notice of an Action or other claim instituted or asserted by a third party with respect to which the Indemnified Party is entitled to indemnification under Section 8.2 or Section 8.3, as applicable, the Indemnified Party receiving such notice shall deliver a Claim Notice to the Indemnifying Party with such information as is required by Section 8.4(a), including for the avoidance of doubt, the Claimed Amount; *provided*, that failure to give such notice shall not affect the right to indemnification hereunder except to the extent of actual prejudice to the Indemnifying Party. The Indemnifying Party shall have the option, and shall notify the applicable Indemnified Party in writing within fifteen (15) Business Days after the date of the Claim Notice of its election to undertake, conduct and control (through counsel of its own choosing and at its own expense) the settlement or defense thereof, and the Indemnified Party shall cooperate with it in connection therewith. The Indemnifying Party shall permit the Indemnified Party to participate in such settlement or defense through counsel chosen by such Indemnified Party (but the fees and expenses of such counsel shall be borne by such Indemnified Party unless the named parties in such Action or Claim (including any impleaded parties) include both the Indemnified Party and Indemnifying Party, and the Indemnified Party shall have been advised by such counsel that there may be one or more legal defenses available to it that are materially different from or additional to those available to the Indemnifying Party (in which case, the Indemnifying Party shall not have the right to control the defense of such Action or Claim on behalf of the Indemnified Party, it being understood, however, that the Indemnifying Party shall not, in connection with such Action or Claim, be liable for the fees and expenses of more than one (1) separate firm of attorneys and that all such fees and expenses shall be reimbursed as they are incurred)). If the Indemnifying Party elects to control the defense, it will not compromise or settle the Action or Claim without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed), unless the relief consists solely of (A) monetary damages to be paid in full by the Indemnifying Party, and (B) includes a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto. If the Indemnifying Party fails to notify the Indemnified Party of its election within the applicable response period, then Indemnifying Party shall be deemed to have elected not to control the defense of such Action or Claim.

(c) If the Indemnifying Party does not control the defense of any Action or Claim, then the Indemnified Party may settle such Action or Claim with the written consent of the Indemnifying Party (not to be unreasonably withheld).

(d) In the event of any conflict with this Section 8.4 and Section 6.2(c), Section 6.2(c) shall control.

Section 8.5 Mitigation and Limitations on Losses. Notwithstanding anything to the contrary contained herein:

(a) Reasonable Steps to Mitigate. The Indemnified Party will take all reasonable commercial steps to mitigate all Losses, including availing itself of any defenses, limitations, rights of contribution, claims against third Persons and other rights at Law or equity, and will provide

such evidence and documentation of the nature and extent of the Losses as may be reasonably requested by the Indemnifying Party.

(b) Claims Limitations. Except for claims of fraud, gross negligence or willful misconduct, neither Party shall have any liability or obligation to indemnify under Section 8.2(a) (excluding breaches of (i) Seller Fundamental Representations and (ii) the representations and warranties contained in Section 4.7 (Tax Benefit; Tax Matters)) or Section 8.3(a) (excluding breaches of Buyer Fundamental Representations), as applicable, unless the aggregate amount arising out of a Claim or Claims for which such Party would be liable thereunder exceeds the Threshold Amount, at which point the aggregate recovery against such Party thereunder shall be the Threshold Amount *plus* any Losses in excess of the Threshold Amount. The “Threshold Amount” shall equal \$[•].

(c) Indemnity Cap. Seller’s maximum aggregate liability for indemnification of Losses pursuant to Section 8.2(a) (other than for breaches of (i) Seller Fundamental Representations or (ii) the representations and warranties contained in Section 4.7 (Tax Benefit; Tax Matters) and Section 4.14 (Environmental Matters)), shall not exceed an amount equal to [fifty percent (50%)] of the Purchase Price then paid or due and payable (the “Seller Indemnification Cap”); *provided, however*, in no event shall Seller’s aggregate liability arising out of its indemnification obligations under Sections 8.2(a) and (b) exceed one hundred percent (100%) of the Purchase Price then paid or due and payable to Seller pursuant to this Agreement. Buyer’s maximum aggregate liability for indemnification of Losses pursuant to Section 8.3(a) (other than for breaches of Buyer Fundamental Representations), shall not exceed an amount equal to [fifty percent (50%)] of the Purchase Price then paid or due and payable (the “Buyer Indemnification Cap” and together with the Seller Indemnification Cap, each an “Indemnification Cap”); *provided, however*, in no event shall Buyer’s aggregate liability arising out of its indemnification obligations under Sections 8.3(a) and (b) exceed one hundred percent (100%) of the Purchase Price then paid or due and payable to Seller pursuant to this Agreement. Each Indemnification Cap in effect at the time of a Claim for breach of representation and warranty will not limit the amount of Losses that may be claimed or that may be recoverable hereunder by the applicable Indemnified Party, including in any award of damages sought or obtained in any Action, *provided*, that the Indemnifying Party will not be required to pay to an Indemnified Party amounts in excess of the applicable Indemnification Cap in effect at the time such payment is due. If the amount of Losses payable by an Indemnifying Party to an Indemnified Party is so limited by the applicable Indemnification Cap in effect at such time, the amount not paid as a result of the application of such Indemnification Cap shall be paid at such time as the such Indemnification Cap increases or, if Buyer is the Indemnified Party, at Buyer’s option, offset against any payment by Buyer to Seller that would result in any increase to the Buyer Indemnification Cap, and any such offset or payment to Buyer will be applied against the Seller Indemnification Cap, and will be deemed an adjustment to the Purchase Price (but not for purposes of adjusting the Seller Indemnification Cap).

(d) Survival of Representations and Warranties. All representations and warranties contained in this Agreement, or in any agreements or instruments executed in connection herewith or delivered pursuant hereto, shall survive the for a period of twenty-four (24) months from the Closing Date, but not longer, except that the Environmental Representations shall survive forty-eight (48) months from the Closing Date, the Seller Fundamental Representations and the Buyer Fundamental Representations shall survive for the period of the applicable statute of limitations, and the representations in Section 4.7 (Tax Benefit; Tax Matters) shall survive for the period of the applicable statute of limitations plus sixty (60) days. All covenants of the Parties made pursuant

to this Agreement that either expressly by their terms survive, or by their nature are to survive or continue in force and effect after the Closing shall remain in effect and be enforceable following such Closing.

Section 8.6 Method of Payment; Offset. All claims for indemnification shall be paid promptly by the Indemnifying Party in immediately available funds in U.S. Dollars. Either Party shall have the sole and absolute right to withhold and set off any Claimed Amount owed to it by the other Party (including, in the case of Buyer, any Buyer Indemnified Party or, in the case of Seller, any Seller Indemnified Party) or any other amount agreed or otherwise owing under this Article 8 against any amounts owed by such Party to the other Party under this Agreement.

Section 8.7 Tax Treatment. The Parties agree to treat any indemnification payment made pursuant to this Agreement as a Purchase Price adjustment for Tax purposes, except as otherwise required by applicable Law.

ARTICLE 9 TERMINATION

Section 9.1 Rights to Terminate. This Agreement may be terminated prior to Closing:

- (a) by mutual written consent of Parties;
- (b) by Buyer, if Seller shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform would reasonably be expected to give rise to the failure of a condition set forth in Section 7.1(b) or Section 7.1(c); *provided*, Seller shall first be entitled to written notice specifying with particularity such breach and a thirty (30) day cure period and *provided furthermore* that Buyer shall not be in breach of this Agreement at such time;
- (c) by Seller, if Buyer shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform would reasonably be expected to give rise to the failure of a condition set forth in Section 7.2(a) or Section 7.2(b); *provided*, Buyer shall first be entitled to written notice specifying with particularity such breach and a thirty (30) day cure period and *provided furthermore* that Seller shall not be in breach of this Agreement at such time;
- (d) by Seller or Buyer if any court of competent jurisdiction in the United States or other Governmental Authority shall have issued an Order or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction and such Order or other action shall have become final and non-appealable; or
- (e) by Seller or Buyer if the Closing has not been consummated on or before the Outside Date; *provided*, that the right to terminate this Agreement pursuant to this Section 9.1(e) shall not be available to a Party if such Party's breach of any provision of this Agreement results in the failure or material delay of the Closing to be consummated on or before the Outside Date; *provided further* that Buyer shall be permitted in its sole discretion to extend the Outside Date on one or more occasions by up to ninety (90) days in the aggregate upon notice to Seller.

Section 9.2 Effect of Termination. If there has been a valid termination pursuant to Section 9.1, then this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of any Party (or any member, shareholder, Affiliate or other Representative thereof), whether arising before or after such termination, based on, arising out of or relating to this Agreement or the negotiation, execution, performance or subject matter hereof (whether in contract or in tort or otherwise, or whether at Law (including at common Law or by statute) or in equity), except for the liability of any Party (whether or not the terminating Party) for the breach of any of its representations, warranties, covenants or other agreements contained in this Agreement occurring prior to or resulting in such termination, and for which the non-breaching Party may pursue all remedies available at law or in equity. For the avoidance of doubt, the rights and obligations set forth in Section 9.3 and Article 11 shall survive the termination of this Agreement.

Section 9.3 Confidentiality.

(a) The Party receiving Confidential Information pursuant to this Agreement (the “Receiving Party”) shall, and shall use commercially reasonable efforts to cause its Affiliates and their respective representatives to (i) protect the confidentiality of the Disclosing Party’s Confidential Information; (ii) not to disclose Confidential Information, except to (x) its Affiliates and its and their respective employees, officers, directors, agents, trustees, managers, consultants, experts, counsel, advisors and potential financing sources and representatives (collectively, “Representatives”) and (y) regulators or other Governmental Authorities, in each case, to the extent necessary to permit them to assist the Receiving Party in satisfying its obligations under this Agreement and to comply with applicable Law; and (iii) be responsible for any disclosure by any such Representative in breach of this Agreement. “Confidential Information” as used in this Agreement shall mean any and all financial, technical, proprietary, confidential, and other information, including data, reports, interpretations, forecasts, analyses, compilations, studies, summaries, extracts, records, know-how, statements (written or oral) or other documents, techniques or procedures of any kind, to the extent they contain information concerning the business and affairs of each Party or its Affiliates, the Project, or any third parties who provided such information to such Party pursuant to a confidentiality arrangement, which is disclosed to the Receiving Party by or on behalf of the party disclosing Confidential Information (the “Disclosing Party”) in connection with the Transaction and regardless of the manner in which it was furnished, including, specifically, the financial statements of the Disclosing Party and its Affiliates and subsidiaries. The Parties further agree that upon Closing, Confidential Information of Seller pertaining to the Project, or the Project Company shall thereafter be Confidential Information of Buyer subject to the provisions of this Section 9.3.

(b) The restrictions of this Section 9.3 do not apply to:

(i) disclosure or release of this Agreement or any part or summary hereof to any Governmental Authority required for obtaining any approval or making any filing; provided, that (a) the Receiving Party agrees to cooperate in good faith with Disclosing Party to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by applicable Law and (b) the Receiving Party shall provide reasonable notice to the Disclosing Party prior to disclosure (if not prevented by Law), of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure;

(ii) information which is, or becomes, publicly known or generally available to the public other than through the action of the Receiving Party in violation of this Agreement;

(iii) information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party prior to the date hereof;

(iv) information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) information which the Receiving Party determines is required to be disclosed pursuant to applicable Law; provided the Receiving Party shall provide reasonable notice to the Disclosing Party of the time and scope of the intended disclosure.

(c) Notwithstanding the foregoing, the Parties may provide any Confidential Information to any Person with review rights specified in other provisions of this Agreement, provided that such Persons have been advised of the confidential nature of the information and have agreed to maintain the confidentiality thereof on terms and conditions at least as restrictive as those set forth herein, and the Party providing Confidential Information to any such Person shall be responsible for the compliance with this Agreement by any such Person. If Confidential Information is the subject of a subpoena from a third party, the receiving Party may disclose such Confidential Information on the advice of its counsel in compliance with the subpoena, provided that the Disclosing Party shall provide notice thereof to the providing Party and make reasonable efforts to afford the providing Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

(d) Notwithstanding anything to the contrary contained herein, Buyer may disclose Confidential Information upon reasonable notice to Seller if Buyer reasonably determines, based upon its status as a regulated public utility, that disclosure to a Governmental Authority is necessary or appropriate in connection with any submission or application to, or response from, any such authorities regarding the Project and this Agreement, the effect thereof on Buyer's rates or investment return or similar matters, provided that Buyer shall (A) endeavor to keep Seller informed with respect to such disclosures, (B) file a written request in the form of a motion for protective order or for confidential treatment or other comparable written request that any Confidential Information be afforded confidential treatment and otherwise endeavor to obtain confidential treatment of Confidential Information, and (C) notify Seller promptly if it receives notice of any challenge to the request that such Confidential Information be afforded confidential treatment.

(e) The obligations of the Parties under this Section 9.3 shall remain in full force and effect for two (2) years following Closing or termination of this Agreement.

(f) Each Party acknowledges that money damages may not be a sufficient remedy for any breach of this Section 9.3. Accordingly, in the event of any such breach, in addition to any other remedies at law or in equity that a party may have, it shall be entitled to equitable relief,

including injunctive relief or specific performance, or both (although no Party shall be entitled to any special, consequential, indirect, punitive or exemplary damages as a result of a breach of this Section 9.3, whether a claim is asserted in contract, tort, or otherwise).

ARTICLE 10

Section 10.1 Limitation on Liability; Disclaimers and Waivers.

(a) OTHER THAN WITH RESPECT TO GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT AND THE INDEMNITIES SET FORTH IN SECTIONS 8.2(C), (D), (E) AND (F) AND SECTIONS 8.3(C) AND (D), IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR LOSSES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IN ANY AMOUNT EXCEEDING, ONE HUNDRED PERCENT (100%) OF THE PURCHASE PRICE.

(b) OTHER THAN WITH RESPECT TO GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE, WHETHER BASED IN CONTRACT, INDEMNIFICATION, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE FOR INDIRECT DAMAGES ARISING OR RESULTING FROM ANY ACT OR OMISSION IN ANY WAY ASSOCIATED WITH THE PERFORMANCE BY SUCH PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT. FOR THE PURPOSES OF THIS AGREEMENT “INDIRECT DAMAGES” SHALL MEAN DAMAGE, INJURY OR LOSS OF AN INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL NATURE INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITIES, LOSS OF PRODUCTION, LOSS OF EARNINGS, LOSS OF CONTRACT, DIMINUTION IN VALUE, COST OF CAPITAL AND LOSS OF USE OF ANY FACILITIES OR PROPERTY OWNED, OPERATED, LEASED OR USED BY THE OTHER PARTY; PROVIDED, THAT LOSSES DUE TO BREACH OF REPRESENTATIONS AND WARRANTIES IN SECTION 4.7 (TAX BENEFIT; TAX MATTERS) THAT ARE ATTRIBUTABLE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE LOSS, DISALLOWANCE, REDUCTION OR RECAPTURE OF, OR INABILITY TO CLAIM, RENEWABLE ENERGY INCENTIVES SHALL NOT CONSTITUTE INDIRECT DAMAGES FOR PURPOSES OF THIS AGREEMENT.

(C) THE OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT ARE OBLIGATIONS OF THE PARTIES ONLY, AND NO RECOURSE SHALL BE AVAILABLE UNDER THIS AGREEMENT AGAINST ANY OFFICER, DIRECTOR, MANAGER, MEMBER, PARTNER, OR AFFILIATE OF ANY PARTY.

ARTICLE 11 GENERAL PROVISIONS¹²

Section 11.1 Expenses. Except as otherwise provided herein, each Party shall be responsible for its own costs and expenses (including attorneys’ and consultants’ fees, costs and expenses) incurred in connection with this Agreement and the consummation of the Transaction.

Section 11.2 Entire Agreement. This Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof any prior confidentiality agreements executed by the Parties in respect of the Transaction. This Agreement contains the sole and entire agreement between the Parties hereto with respect to the subject matter hereof, and there are no

¹² **Note to Draft:** PSE reserves the right to include additional provisions relating to cyber security.

agreements, understandings, representations or warranties between the Parties with respect to the subject matter hereof other than those set forth herein.

Section 11.3 Amendments. This Agreement may only be amended, modified or supplemented by means of a written document executed by all Parties.

Section 11.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which when taken together shall constitute one and the same instrument. The electronically reproducible signatures of the Parties (e.g., PDFs) shall be deemed to constitute original signatures, and any such executed copies hereof shall be deemed to constitute duplicate originals.

Section 11.5 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the invalid or unenforceable provision does not go to the essential purposes of this Agreement and the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision shall be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

Section 11.6 Assignability. The rights under this Agreement shall not be assignable or transferable by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns. Nothing contained in this Agreement, express or implied, is intended to confer upon any Person, other than the Parties hereto, their permitted successors-in-interest and permitted assignees, any rights or remedies under or by reason of this Agreement unless so stated to the contrary. Unless otherwise agreed, any assignment effected in accordance with this Section 11.6 will not relieve the assigning Party of its obligations and liabilities under this Agreement

Section 11.7 Captions. The captions of the various Articles, Sections, Exhibits and Schedules of this Agreement have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Agreement.

Section 11.8 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by, and construed in accordance with, the Laws of the State of Washington (without regard to the conflict of Laws principles thereof), including all matters of construction, validity and performance.

Section 11.9 Jurisdiction and Waiver of Jury Trial.

(a) THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS SITTING IN KING COUNTY, WASHINGTON WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTION, AND EACH PARTY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH DISPUTE OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH COURTS.

(b) THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH THEY MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY BROUGHT IN SUCH COURT OR ANY DEFENSE OF INCONVENIENT FORUM FOR THE MAINTENANCE OF SUCH DISPUTE. EACH PARTY AGREES THAT A JUDGMENT IN ANY SUCH DISPUTE MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

Section 11.10 Notices. All notices, requests, demands and other communications under this Agreement must be in writing, by physical (including by mail or courier) or electronic mail delivery to the appropriate address or number as set forth below. Notices will be effective and deemed to have been given when (a) personally delivered or emailed (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), (b) if sent by electronic mail during normal business hours of the recipient, upon having obtained electronic delivery confirmation thereof, or if sent by electronic mail after normal business hours of the recipient, on the next Business Day, or (c) five (5) calendar days following mailing by certified or registered mail, postage prepaid and return receipt requested. Any Party may from time to time change its address for the purpose of notices to that Party by a similar notice specifying a new address, but no such change is effective until it is actually received by the Party sought to be charged with its contents.

If to Seller:

[address]

Telephone: [•]

Attn: [•]

Email: [•]

with a copy to:

[•]

If to Buyer:

Puget Sound Energy, Inc.

355, 110th Avenue Northeast
Bellevue, WA 98004
Attention: General Counsel
Email: lorna.luebbe@pse.com

With copy to:

[•]

Section 11.11 No Third Party Beneficiaries. Except as may be specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any Party, nor give any third Persons any right of subrogation or action against any Party.

Section 11.12 No Joint Venture. Nothing contained in this Agreement creates or is intended to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to any Party. The right to receive the Project Substantial Completion Payment shall not be represented by any form of certificate or other instrument, and does not constitute an equity or ownership interest in Buyer or the Project Company, Seller shall not have any right as a security holder of Buyer or the Project Company as a result of its rights to receive the Project Substantial Completion Payment (including rights to vote or dividends) and no interest is payable with respect to the Project Substantial Completion Payment.

Section 11.13 Construction of Agreement. This Agreement and any documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the Person who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable either to this Agreement or such other documents and instruments.

Section 11.14 Waiver of Compliance. To the extent permitted by applicable Law, any failure of any of the Parties to comply with any obligation, covenant, agreement or condition set forth herein may be waived by the Party entitled to the benefit thereof only by a written instrument executed and delivered by such Party, but any such waiver shall not operate as a waiver of, or estoppel with respect to, any prior or subsequent failure to comply therewith. The failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

Section 11.15 Consents Not Unreasonably Withheld. Wherever the consent or approval of any Party is required under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless such consent or approval is expressly stated to be subject to a Party's sole discretion.

Section 11.16 Enforcement of the Agreement. The Parties agree that no adequate remedy at law exists for a breach or threatened breach of any of the provisions of this Agreement, the continuation of which unremedied will cause the aggrieved Party to suffer irreparable harm. Accordingly, the Parties agree

that the Parties shall be entitled, in addition to other remedies that may be available to them, to immediate injunctive relief from any breach or threatened breach of any of the provisions of this Agreement and to specific performance of their rights hereunder, as well as to any other remedies available at law or in equity. This right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, the Parties would not have entered into this Agreement. The Parties agree that they will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the opposing Party has an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or in equity. The Parties shall not be required to provide any bond or other security in connection with any such order or injunction. The Parties also agree that the seeking of any remedies pursuant to this Section 11.16 shall not in any way constitute a waiver of any right to seek any other form of relief that may be available under this Agreement.

Section 11.17 Exclusive Representations and Warranties; Disclaimers. Except for the representations and warranties made by the Parties to each other and contained in Article 3, Article 4, and Article 5 or in any Transaction Document, no Party, nor any other Person on such Party's behalf, makes any other express or implied representation or warranty with respect to the Transaction, and each Party expressly disclaims (i) any other representations or warranties, including with respect to (A) Seller, the Project Company, Buyer, or their respective Affiliates' businesses, assets, employees, permits, liabilities, operations, prospects or condition (financial or otherwise) or (B) any opinion, projection, forecast, statement, budget, estimate, advice or other information with respect to the projections, budgets or estimates of future revenues, results of operations (or any component thereof), cash flows, financial condition (or any component thereof) or the future business and operations of Seller, the Project Company, Buyer, or their respective Affiliates or relating to the Project, made, communicated or furnished (orally or in writing), or to be made, communicated or furnished (orally or in writing), including pursuant to any electronic data room prepared in connection with the Transaction, to any Party, its Affiliates or its Representatives, in each case, whether made by Seller, the Project Company, Buyer, or any of their respective Affiliates or Representatives or any other Person (this clause (B), collectively the "Projections") and (ii) all liability and responsibility for any such other representation or warranty or any such Projections.

[Signature Page Follows]

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

SELLER:

[•]

By: _____
Name:
Title:

BUYER:

PUGET SOUND ENERGY, INC.

By: _____
Name:
Title:

EXHIBIT A

Form of Assignment Agreement

[To be attached.]

EXHIBIT B

Ready for NTP State¹³

The Project shall have achieved its “Ready for NTP State” when each of the following conditions has been achieved (or waived by Buyer), to the reasonable satisfaction of Buyer.

1. Each Construction and Equipment Agreement shall be in agreed form with each of their respective counterparties and otherwise in form and substance satisfactory to Buyer in its reasonable discretion, not to be unreasonably, withheld, conditioned or delayed;
2. Delivery of current estoppels in connection with all leasehold and easement interests in Real Property;
3. Delivery of a Phase I Environmental Assessment for the Site in accordance with Section 2.4(a)(viii) and reasonably satisfactory to Buyer;
4. Other than as contemplated by clause (d) of Item 2 of this Exhibit B, the Project Company shall have not amended or modified the leases covering the Real Property in existence as of the Execution Date; and
5. The Project Company shall have obtained the Closing Required Permits, except as may be waived by Buyer in its sole discretion, all such permits and authorizations are final and not subject to further challenge or appeal.
6. *[insert additional items]*

¹³ **Note to Draft:** All Ready for NTP State conditions subject to Buyer diligence.

EXHIBIT C

Site Plans

EXHIBIT D

Form of Seller Guaranty

*2024 Voluntary All-Source RFP for CETA-Compliant Energy and
Capacity Resources:*

Exhibit K-4. Form Build Transfer Agreement (BTA)

Confidential

For reference only.
PSE is not requesting a redlined form agreement as part of a bidder's RFP proposal.

This working draft does not constitute a binding offer, shall not form the bases for an agreement by estoppel nor otherwise, and is conditioned upon each party's receipt of all required management approvals (including final credit and legal approval) and all regulatory approvals. Any action taken by a party in reliance on the terms set forth in this working draft or on statements made during negotiations pursuant to this working draft shall be at that party's own risk. Until this agreement is negotiated, approved by management, executed, delivered and approved by all required regulatory bodies, no party shall have any other legal obligations, expressed or implied, or arising in any other manner under this working draft or in the course of negotiations.

BUILD TRANSFER AGREEMENT

dated as of

[____], [____]

by and between

PUGET SOUND ENERGY, INC.

and

[_____]

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¹ Note to Draft: To be updated based on negotiation of Agreement.

² Note to Draft: To be updated based on negotiation of Agreement.

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³ Note to Draft: To be updated based on negotiation of Agreement.

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Consent Persons

BUILD TRANSFER AGREEMENT⁴

THIS BUILD TRANSFER AGREEMENT (this "Agreement") is entered into as of [_____] [____], 2024 (the "Execution Date"), by and between Puget Sound Energy, Inc., an Washington corporation ("Buyer"), and [_____] a [_____] limited liability company ("Developer"). Buyer and Developer are each referred to individually as a "Party" and, collectively, as the "Parties."

RECITALS

WHEREAS, Developer owns one hundred percent (100%) of the outstanding membership interests (the "Membership Interests") in [_____] a [_____] limited liability company (the "Project Company");

WHEREAS, the Project Company is developing [insert project description] (the "Project") as further described in [EXHIBIT A], attached hereto; and

WHEREAS, upon Mechanical Completion of the Project, Buyer desires to purchase all of the Membership Interests in the Project Company from Developer, subject to the terms and conditions set forth herein.

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.

AGREEMENT

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Defined Terms. Capitalized terms used in this Agreement have the meanings set forth below:

"30% ITC" means an ITC with respect to which the "energy percentage" (as defined in Section 48(a)(2) of the Code and increased by Section 48(a)(9) of the Code) is thirty percent (30%) or the "applicable percentage" (as defined in Section 48E(a)(2)) is thirty percent (30%).

"100% PTC" means a PTC the amount of which is subject to the five times multiplier under Code Section 45(b)(6) or with respect to which the "applicable amount" is determined under Code Section 45Y(a)(2)(B).

"Acceptable Guaranty" means a parent guaranty in substantially the form of [EXHIBIT H] attached hereto, or such other form reasonably acceptable to Buyer, from a Creditworthy Entity.

"Accepted Update" has the meaning set forth in Section 9.4(b).

"Affiliate" means with respect to any Person, any other Person who, directly or indirectly, Controls such first Person or is Controlled by such first Person or is under common Control with such first

⁴ Note to Draft: This form BTA contemplates closing at Mechanical Completion in order to preserve ITC benefits for PSE. If the subject Project will utilize the PTC, closing can occur at Substantial Completion.

Person. For the avoidance of doubt, the Project Company shall be deemed to be an Affiliate of Developer prior to the Closing and an Affiliate of Buyer after the Closing.

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

“Assets” means, with respect to any Person, all right, title and interest of such Person in and to assets and rights of any kind, whether tangible or intangible, real or personal, including the Real Property and Real Property Documents, buildings, equipment, machinery, improvements, fixtures, contracts, Environmental Attributes, solar insolation data, reports and studies (including those related to interconnection, environmental, cultural, resource and market matters), Permits, Intellectual Property, inventory, Books and Records, proprietary rights, return and other rights under or pursuant to all warranties, representations and guarantees, cash, accounts receivable, deposits and prepaid expenses.

“Assignment and Assumption Agreement” has the meaning set forth in Section 3.2(a)(i).

“Bankruptcy” means, with respect to any Person, (a) commencement by such Person of any case or other proceeding (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets; or (b) commencement against such Person of any case or other proceeding of a nature referred to in clause (a)(i) or (a)(ii) above which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (c) commencement against such Person of any case or other proceeding seeking issuance of a warrant of attachment, execution or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (d) such Person shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (a), (b) or (c) above; or (e) such Person shall admit in writing its inability to pay its debts as they become due or shall make a general assignment for the benefit of its creditors.

“Base Purchase Price” has the meaning set forth in Section 3.3(a).

“Basket Amount” has the meaning set forth in Section 19.1(c).

“Benefit Plan” means any employee benefit plan, as that term is defined in Section 3(3) of ERISA, or other material pension, bonus, profit sharing, stock option or other agreement or arrangement providing for employee remuneration or benefits, including a multiemployer plan, as that term is defined in Section 4001(a)(3) of ERISA.

“BPA” means Bonneville Power Administration.

“Books and Records” means the minute books, membership interest certificates, membership interest transfer ledger, organizational documents of the Project Company, studies, data, books, and records related to the Project, the real property agreements referenced in clause (b) of “Project

Assets”, the Project Company Contracts, Project permits referenced in clause (g) of “Project Assets” and the Project reports referenced in clause (h) of “Project Assets”.

“Business Day” means any day other than a Saturday, Sunday or other day on which banks are authorized or required to be closed in Seattle, Washington.

“Buyer” has the meaning set forth in the preamble to this Agreement.

“Buyer Consents” has the meaning set forth in Section 7.4.

“Buyer Construction Costs” means any documented Construction Costs to the extent arising out of or resulting from:

- (a) any EPC Change Order:
 - (i) that is jointly agreed upon after the Closing Date by Buyer, on behalf of the Project Company, and Contractor, without the express written consent or deemed consent of Developer;
 - (ii) that is requested by Buyer (whether before or after the Closing Date);
 - (iii) to which Contractor is entitled pursuant to the EPC Contract and which is issued, required or requested prior to the Closing Date, to the extent arising as a result of Buyer-Caused Delay; or
 - (iv) that is issued, required or requested after the Closing Date by Contractor, to the extent arising as a result of a delay or suspension in the performance of the Work arising after the Closing Date and caused by the Project Company;
- (b) any negligent act or omission of Buyer or a breach by Buyer of any of the Transaction Documents;
- (c) after the Closing Date, any negligent act or omission of the Project Company, or a breach by the Project Company, of any of the Project Company Contracts, including the EPC Contract;
- (d) any indemnification obligations of the Project Company for claims arising after the Closing Date under any Project Company Contract, including the EPC Contract; or
- (e) any payment owed to Contractor arising out of an Buyer Event of Default (as defined in the EPC Contract) that occurs after the Closing Date.

provided, however, that in no event shall any of the foregoing constitute Buyer Construction Costs to the extent they arise out of the fault, negligence or willful misconduct of Developer or any of its Affiliates.

“Buyer Design Review Parties” has the meaning set forth in Section 13.1(b).

“Buyer Design Specifications” means the specifications laid out in EXHIBIT I.

“Buyer Indemnified Parties” means Buyer and its Affiliates (including, after the Closing, Project Company) and their respective directors, officers, employees, and agents.

“Buyer Material Adverse Change” means any change in condition after the Execution Date that actually has, or is reasonably likely to have, a significant adverse effect on: (a) the validity or enforceability of this Agreement or any of the other Transaction Documents as against Buyer; or (b) the performance of or the ability of Buyer to perform its obligations under the Transaction Documents to which it is a party.

“Buyer Obligation” has the meaning set forth in Section 11.2.

“Buyer Permits” has the meaning set forth in Section 7.6(a).

“Buyer’s Engineer” means [_____].⁵

“Buyer’s Knowledge” means, as of the date on which any representation and warranty or other matter qualified by Buyer’s Knowledge is required to be made by Buyer, the actual knowledge, after reasonable inquiry of the employees of the Buyer or any of its Affiliates who are responsible for, or have direct involvement, in the subject matter of the representation and warranty or other matter involved, of any of one or more of the following persons (and any successor person holding the same title or the functional equivalent and having responsibility for the transaction contemplated by this Agreement): [_____].⁶

“Buyer’s Representative” means the natural Person designated as such by Buyer pursuant to Section 10.6(a), which shall initially be [_____].⁷

“Buyer Requested Scope Changes” has the meaning given in Section 3.3(d).

“Buyer-Caused Delay” means an actual delay in the critical path of the Work, to the extent caused by the failure by Buyer to perform any of its obligations pursuant to this Agreement, except to the extent such delay (a) is attributable to Developer’s failure to perform its obligations under the Agreement or (b) is the result of the fault, negligence, or willful misconduct of Developer or any of its Affiliates; provided, that no claim for a Buyer-Caused Delay may be made unless the actual delay arising from any given event exceeds one (15) days.

“Capacity Guarantee” means the capacity guarantee set forth in [APPENDIX H].

“Capacity Test” means the test performed in accordance with the requirements of [APPENDIX H] to determine whether the Capacity Guarantee has been achieved.⁸

“Change in Law” means (i) the enactment, adoption, promulgation, issuance, modification, amendment, replacement, successor or repeal or any change in application, after the Execution Date of any applicable Law; or (ii) the imposition of any material conditions on the issuance or renewal of any applicable Permit after the Execution Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation); provided, however, a Change in Law shall not include any change or adoption of any Law with respect to (i) Taxes assessed on income, profits, revenues or gross receipts, (ii) Taxes that vary the compensation, benefits, or amounts to be paid to or on behalf of or on account of employees or (iii) organization, existence, good standing, qualification, or licensing

⁵ Note to Draft: To be provided by the Buyer.

⁶ Note to Draft: To be provided by the Buyer.

⁷ Note to Draft: To be provided by the Buyer.

⁸ Note to Draft: Capacity regime to be later built out in Appendices and Exhibits.

in any jurisdiction. For the avoidance of doubt, a Change in Law shall not include any change or adoption of a Law that is codified prior to the Execution Date but, by its terms, does not come into effect until after the Execution Date.

“Change in Law Cap” has the meaning set forth in Section 4.1(a)(v).

“Change of Control” shall mean, with respect to Developer: (a) the consolidation with or merger into any other Person by such Person or by any other Person, or (b) a direct or indirect assignment, conveyance, transfer, lease, exchange, conversion or other disposition of the equity interests in such Person or the voting rights with respect thereto, as a result of which the Developer Parent shall cease to, directly or indirectly, Control such Person; provided, however, that (i) any direct or indirect sale or issuance of equity interests in Developer to a Lender pursuant to a tax equity financing transaction and (ii) any Change of Control with respect to Developer Parent, shall in each case not constitute a “Change of Control”.

“Claim” or “Claims” means any indemnity, demand, demand letter, claim, litigation, cause of action, notice of noncompliance or violation, or other proceeding.

“Closing” has the meaning set forth in Section 3.4(a).

“Closing Date” has the meaning set forth in Section 3.4(a).

“Closing Payment” has the meaning set forth in Section 3.4(d).

“Code” means the Internal Revenue Code of 1986, as the same may be amended from time to time, including any amendments or any substitute or successor provisions thereto.

“Conditional Use Permit” means any Discretionary Permit for the Project.

“Confidential Information” has the meaning set forth in Section 24.1(a).

“Construction” means any activity or action that constitutes construction for the purpose of Code Sections 45(b)(7) and (8), Code Sections 45Y(g)(9) and (10), Code Sections 48(a)(10) and (11), and Code Sections 48E(d)(3) and (4) and any PWA Guidance.

“Construction Costs” means any and all third-party out-of-pocket costs and expenses incurred by or on behalf of Developer, Project Company, or their respective Affiliates to site, design, develop, engineer, procure, supply, construct, interconnect, permit, startup, commission or test the Project or any parts or components thereof or materials used therein, in each case, in order for the Project to achieve Final Acceptance, including amounts owing under Project Company Contracts.

“Construction Management Services” has the meaning set forth in Section 12.1.

“Contract” means any agreement, lease, license (other than a Permit), note, bond, evidence of Indebtedness, mortgage, indenture, security agreement, purchase order, binding bid or other instrument or contract, whether written or oral.

“Contractor” means [_____] ⁹ a [_____] , the primary contractor to be engaged by Project Company pursuant to the EPC Contract.

“Contractor Progress Report” has the meaning set forth in Section 11.6(b).

“Contractor’s Safety Assurance Program” means that certain safety program created by Developer and administered by Contractor pursuant to the EPC Contract, attached as [APPENDIX G].

“Control” of any Person means the possession, directly or indirectly, of the power either to (a) vote fifty percent (50%) or more of the equity, capital or profits, or other interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any secured lender of such Person.

“Corrupt Practices Laws” means (i) the Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95-213, §§101-104), as amended, and (ii) any other applicable law relating to bribery, kick-backs or anti-corruption.

“Credit Support” means shall mean a letter of credit in the form contained at [EXHIBIT D]; provided that, after the Guaranteed Mechanical Completion Date, Developer shall be permitted to utilize a Parent Guaranty.

“Creditworthy Entity” means a U.S. state or federally chartered commercial bank (or U.S. branch of a foreign commercial bank) which has (a) assets of at least ten billion Dollars (\$10,000,000,000) and (b) senior unsecured long term debt or deposits that are rated at least “A-” (or its current equivalent) by Standard & Poor’s and at least “A3” (or its then current equivalent) by Moody’s.

“Critical Milestones” means those certain Milestones, set forth in [APPENDIX E], designated in the Project Schedule as milestones that are critical to the ability of the Project to achieve Mechanical Completion by the Outside Closing Date.

“Critical Milestone Completion Date” means the completion date, set forth in [APPENDIX E], by which Developer will achieve the corresponding Critical Milestone.

“Data Room” means the virtual data room set up for the Project Company and Project, accessible at [_____] ¹⁰.

“Defect” means any improper workmanship and defects in design, engineering, construction, fabrication, workmanship, materials, and operations in the Project, the Equipment or other Work, including any “Defect” as may be defined in the EPC Contract.

“Delay Liquidated Damages Cap” has the meaning set forth in Section 17.2.

“Discretionary Permit” means a Permit associated with the ownership, development, construction, operation or maintenance of the Project pursuant to applicable Law where the issuing Governmental Authority exercises discretion in deciding to approve or disapprove the Permit, including, without limitation, county special approvals for the site plan, traffic study and height restrictions and other

⁹ Note to Draft: To be provided by Developer.

¹⁰ Note to Draft: Link to be inserted by Developer.

minor use permits, use permits, minor variances, variances, zoning approvals, design review approval, subdivision approvals, master development plans, permits or authorizations required from any agency exercising jurisdiction respecting the environment, natural resources or cultural resources or as otherwise set forth under applicable Environmental Law. For the avoidance of doubt, “Discretionary Permits” shall not include any Permits that are non-discretionary or ministerial in nature and able to be obtained in the ordinary course of business.

“Design Documents” has the meaning set forth in Section 13.1(b).

“Developer” has the meaning set forth in the preamble of this Agreement.

“Developer Consents” has the meaning set forth in Section 5.4(b).

“Developer Credit Event” shall be deemed to have occurred if at any time Developer fails to satisfy its credit support obligations of Section 8.1 hereunder, which may include (i) a failure by Developer or, if applicable, the Developer’s guarantor, to maintain an Investment Grade Credit Rating, or (ii) if a bank issuing a Letter of Credit hereunder ceases to be a “Creditworthy Entity.” For purposes of this definition, a Developer Credit Event shall not be deemed to have occurred with respect to a Letter of Credit if Buyer has drawn the full amount of such Letter of Credit pursuant to the draw conditions set forth in Section 8.4.

“Developer Firm Date Conditions” means those conditions to achievement of the Firm Date, as set forth in Section 2.1(a)(iii).

“Developer Indemnified Parties” has the meaning set forth in Section 19.1(b).

“Developer IT Asset” means all of the software, computer systems, workstations, routers, hubs, switches, circuits, servers and other information technology equipment of the Developer used in connection with the Project Company or the Project Assets.

“Developer Parent” means [_____] ¹¹, a [_____] limited liability company.

“Developer Party” means each of Developer, Contractor, any Subcontractor, and, if applicable, Developer’s guarantor.

“Developer Progress Report” has the meaning set forth in Section 11.6(a).

“Developer’s Equipment” means all of the equipment, materials, apparatus, structures, tools, consumables, supplies and other goods provided and used by a Developer Party for the performance of the Work, but which are not intended to be incorporated into the Project.

“Developer’s Knowledge” means, as of the date on which any representation and warranty or other matter qualified by Developer’s Knowledge is required to be made by Developer, the actual knowledge, after reasonable inquiry of the employees of the Developer or any of its Affiliates who are responsible for, or have direct involvement, in the subject matter of the representation and warranty or other matter involved, of any of one or more of the following persons: [____],[____],[____] ¹².

¹¹ Note to Draft: To be provided by Developer.

¹² Note to Draft: To be provided by Developer.

“Developer’s Representative” has the meaning set forth in Section 10.5(a).

“Dollars” and the “\$” symbol means the lawful currency of the United States of America.

“Disclosing Party” has the meaning set forth in Section 24.1(a).

“Emergency Condition” means a condition or situation that presents an imminent threat of physical harm to life or health, or damage to material property.

“Energy” means the electrical energy in the form of three (3) phase, sixty (60) hertz, alternating current produced by the Project.

“Encumbrances” means any and all mortgages, pledges, claims, liens, security interests, options, purchase rights, conditional and installment sales agreements, defects of title, and other encumbrances and charges of any kind.

“Enforceability Exceptions” means bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or other similar Laws of general application relating to or affecting the enforcement of creditors’ rights and by general equitable principles (regardless of whether enforceability is considered in a proceeding in equity or at law).

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the capabilities of the Project and its displacement of conventional energy generation or other assets. Environmental Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to such avoided emissions. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) Tax Benefits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. Environmental Attributes under the preceding definition are limited to Environmental Attributes that exist under applicable Law as of the Execution Date.

“Environmental Law” means any applicable Law that is in effect as of the Execution Date and relates to Regulated Materials, pollution, occupational health and safety (to the extent such relates to exposure to Regulated Materials), or the protection of the environment, natural resources, or wildlife, including, without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (“CERCLA”), (b) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (the “Clean Water Act”), (d) the Clean Air Act, 42 U.S.C. § 7401 et seq. (“CAA”), (e) the Hazardous Materials

Transportation Authorization Act of 1994, 49 U.S.C. § 5101 et seq., (f) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., (g) the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629, (h) the Oil Pollution Act, 33 U.S.C. § 2701 et seq., (i) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (j) the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j, (k) the Federal Insecticide, Fungicide, & Rodenticide Act, 7 U.S.C. § 136 et seq., (l) the Endangered Species Act, 16 U.S.C. § 1531 et seq., (m) the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., (n) the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 et seq., (o) the National Historic Preservation Act, 16 U.S.C. §§ 470a et seq., (p) the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., (q) the Rivers and Harbors Act of 1899, (r) state equivalents to items (a) through (q), and (s) applicable implementing rules and regulations of Governmental Authorities for items (a) through (r).

“Environmental Matters” means the representations set forth in Section 6.17.

“EPC Certificate of Mechanical Completion” has the meaning set forth in the EPC Contract.

“EPC Certificate of Substantial Completion” has the meaning set forth in the EPC Contract.

“EPC Change Order” means any order identified as a “Change Order” and issued by the Project Company to Contractor or Contractor to the Project Company, in each case as mutually agreed to pursuant to the EPC Contract.

“EPC Contract” means that certain Engineering, Procurement, and Construction Contract, [to be entered into] by and between the Project Company and Contractor for the engineering, procurement, construction, and commissioning of the Project, in form and substance acceptable to Buyer.

“EPC Contract Price” means the “Contract Price” as defined in the EPC Contract.

“EPC Estoppel” has the meaning set forth in Section 3.2(a)(vii).

“Equipment” means the materials, supplies, apparatus, devices, machinery, hardware, equipment, parts, special tools, components, construction utilities, instruments, appliances, lines, fiber optic cable, spare parts and appurtenances thereto, provided by a Developer Party and which are intended to, or actually do, form a permanent part of the Project, excluding any Developer’s Equipment.

“Excess Project Completion Costs” has the meaning set forth in Section 3.4(c).

“Exclusivity Period” has the meaning set forth in Section 4.1(f).

“Execution Date” has the meaning set forth in the preamble to this Agreement.

“Final Acceptance” has the meaning set forth in the EPC Contract.

“Final Nameplate Capacity” shall mean the actual nameplate capacity for the Project on the Substantial Completion Date or, subject to Section 17.2, the date that is ninety (90) days thereafter.

“Final Purchase Price” has the meaning given in Section 3.3(f).

“Final Purchase Price Allocation” has the meaning set forth in Section 15.3.

“Final Price Offer” has the meaning given in Section 3.3(b).

“Final Price Offer Date” has the meaning given in Section 3.3(b).

“Firm Date” has the meaning set forth in Section 2.1(a).

“Firm Date Deadline” has the meaning set forth in Section 4.1(a)(iii).

“Firm Date Reports” means those Reports specifically identified on Schedule 1.1-B.

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of reasonable 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, and (iii) 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.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:

(i) acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, public disorders, rebellion, violent demonstrations, revolution, sabotage or terrorist action;

(ii) any effect of unusually severe natural elements, such as fire, subsidence, earthquakes, floods, tornadoes, storms, lightning, or similar cataclysmic occurrence or other unusual natural calamities;

(iii) except as set forth in this definition below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);

(iv) explosion or accident;

(v) governmental action or inaction;

(vi) emergencies (including but not limited to transmission load relief events and minimum generation emergencies) declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy or limiting the production of Energy, including Energy to be delivered pursuant to this Agreement; or

(vii) Impacts associated with any pandemic or epidemic (including COVID-19), but only to the extent such impacts otherwise meet the definition of Force Majeure included herein.

(b) Force Majeure shall not be based on:

- (i) unavailability of materials or equipment, except if directly caused by an independent event of Force Majeure;
- (ii) delays in transportation, except if directly caused by an independent event of Force Majeure;
- (iii) Increased costs for equipment, supplies or labor or services;
- (iv) Developer's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
- (v) a strike, work stoppage or labor dispute arising out of or limited only to any one or more of Developer, Developer's Affiliates, or any other third party employed by Developer to work on the Project;
- (vi) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party; or
- (vii) any breakdown, degradation or malfunction of the Project's equipment that is not directly caused by an independent event of Force Majeure.

"FPA" means the Federal Power Act, 16 U.S.C. § 791a, *et seq.*, and the rules and regulations adopted thereunder, as they may be amended from time to time.

"Full Notice to Proceed" means the notice to proceed, issued pursuant to the EPC Contract, that authorizes the Contractor to begin the full scope of work of the EPC Contract and is not limited or contingent upon the satisfaction of any condition.

"Fundamental Representation" means any of Sections 5.1 (Organization, Standing, and Power), 5.2 (Execution, Delivery and Enforceability), 5.3 (Binding Agreement), 5.4 (No Conflicts), 5.7 (Membership Interests), 5.13 (Brokers), 6.1 (Organization, Standing, and Power), 6.5 (No Prior Business), 6.7 (Subsidiaries and Joint Ventures), 7.1 (Organization, Standing, and Power), 7.2 (Authority; Execution and Delivery), 7.3 (Binding Agreement), and 7.4 (No Conflicts).

"GAAP" means United States generally accepted accounting principles.

"Governmental Authority" shall mean any federal, state, local or municipal government, governmental department, city council, public power authority, public utility district, joint action agency, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question, including the North American Electric Reliability Corporation and Federal Energy Regulatory Committee ("FERC").

"Guaranteed Mechanical Completion Date" means [____], as may be extended pursuant to Section 17.2.

"Guaranteed Substantial Completion Date" means [____].

"Hazardous Substances" means any substance, waste, contaminant or material that is listed, defined, designated, classified or regulated as hazardous, radioactive or toxic, or as a pollutant or

contaminant, under or pursuant to any Environmental Law, including materials defined as hazardous substances pursuant to Section 101(14) of CERCLA, as a “hazardous substance,” “extremely hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” or any other material subject to treatment as hazardous by reason of ignitability, corrosivity, reactivity, or toxicity; and pollutants, effluents, residues, contaminants, asbestos, petroleum (including all petroleum-related and derived products, by-products, and wastes), polychlorinated biphenyls, urea formaldehyde, per- and polyfluoroalkyl substances, radon gas, radioactive materials (including any source, special nuclear, or by-product material), explosives, chlorofluorocarbons, lead or lead-based materials.

“HB 1589” shall have the meaning set forth in Section 10.2(c)

“Import Taxes” means import taxes, import duties, custom duties, tariffs, fees, imposts, value-added tax, sales tax, quotas, and other similar charges that are imposed, assessed, or levied on the importation of equipment, materials or components of the Project.

“Indebtedness” means (a) any indebtedness for borrowed money or issued in substitution for or exchange of indebtedness for borrowed money, (b) any indebtedness evidenced by any note, bond, debenture, or other debt security, (c) any indebtedness for the deferred purchase price of property or services, (d) Liabilities under any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, or other similar agreement designed to protect the Project Company against fluctuations in interest rates or other currency fluctuations, (e) all Liabilities with respect to any commitment by which the Project Company assures a creditor against loss (including contingent reimbursement obligations with respect to letters of credit) and all other Liabilities guaranteed in any manner by the Project Company, (f) any obligations under capitalized leases, conditional sales contracts, and other similar title retention instruments whether short term or long term, or (g) any indebtedness secured by a Lien on any property or assets of the Project Company and/or any off-balance sheet financings.

“Indemnified Party” has the meaning set forth in Section 19.1(c).

“Indemnifying Party” has the meaning set forth in Section 19.1(e).

“Independent Engineer” means the engineering firm selected by the Parties for the Project from the list of mutually acceptable nationally-recognized engineering firms included in [APPENDIX I].

“Insolvent” means that the sum of the debts and other probable liabilities of a Person exceeds the present fair saleable value of such Person’s assets.

“Intellectual Property” means all patents, patent rights, trademarks, trademark rights, trade names, trade name rights, copyrights, service marks, service mark rights, trade secrets, applications to register, and registrations for, the foregoing trademarks, service marks, know- how and other proprietary rights and information.

“Intangible Personal Property” means all intellectual property and all applications, databases, computer files and intangible information or materials relating primarily to the Project.

“Interconnection Agreement” means that certain [Standard Large Generator Interconnection Agreement], dated [_____] [as amended], by and between Project Company and Transmission Provider, as may be amended or restated from time to time.

“Interconnection Costs” means costs, including transmission customer interconnection costs, transmission provider interconnection costs, network upgrades, and affected systems costs, if any, charged by the Transmission Provider, applicable balancing authority, or operators of affected systems, or third party out-of-pocket costs incurred by the Developer, any Affiliate of Developer (including the Project Company), or Contractor in connection with the interconnection of the Project.

“Interconnection Delay” means Transmission Provider has not provided backfeed power to the Project by [____], and such failure is not otherwise excused by Force Majeure and not caused by Developer’s actions or Developer’s failure to take commercially reasonable actions.

“IRS” means the United States Internal Revenue Service and any successor thereto.

“ITC” means the energy credit pursuant to Section 48 of the Code or the clean electricity investment credit under Section 48E of the Code.

“Investment Grade Credit Rating” shall mean a long-term credit rating (corporate, issuer or long-term senior unsecured debt), unsupported by third-party credit support, of “Baa3” or higher by Moody’s or “BBB-” or higher by Standard & Poor’s, or if such Person has a credit at such time from both Standard & Poor’s and Moody’s, “BBB-” or better from Standard & Poor’s and “Baa3” or better from Moody’s.

“Judgment” means any judgment, order, award, injunction, writ, or decree of any Governmental Authority.

“Key Personnel” has the meaning set forth in the EPC Contract.

“Late Payment Rate” means an amount equal to the Prime Rate plus 200 basis points; provided, that in no event shall the Late Payment Rate exceed the maximum rate permitted by applicable Law.

“Law” means all laws (including each Environmental Law), statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of any Governmental Authority having the force and effect of law, and as to any Person, the organizational, or governing documents of such Person.

“Lender” means the lender (including any trustee or agent on behalf of such lender) of Developer or any of its Affiliates (including Project Company) directly providing construction debt financing for the construction, of the Project, whether that financing takes the form of private or public debt or any other form, and any Person providing interest rate protection agreements to hedge any of the foregoing obligations.

“Liabilities” means all Claims including those relating to Environmental Laws, demands, damages, losses, Taxes, liabilities, or judgments, including all interest, penalties, fines and other sanctions, and any reasonable costs or expenses in connection therewith, including attorneys’ and consultants’ fees and expenses.

“Liability Cap” has the meaning set forth in Section 19.1(d).

“Lien” means any mortgage, pledge, security interest, encumbrance, option, defect, lien, charge, or other similar right of any Person of any kind, including any lien or charge arising by statute or other law.

“Made Available” means that the materials (a) with respect to materials required to be provided on or prior to the Execution Date, the Firm Date, or the Closing Date, (i) were posted to the Data Room or otherwise provided by Developer at least three (3) Business Days prior to the relevant date or (ii) were otherwise received by Buyer at least three (3) Business Days prior to the relevant date, and (b) with respect to other materials, were posted to the Data Room or otherwise provided by Developer.

“Major Equipment” means the specific major equipment for use at the Project as provided by the Buyer found at [Appendix L¹³].

“Major Equipment Warranties” means those certain manufacturer warranties for the Major Equipment identified in [APPENDIX D].

“Major Subcontractors” means Subcontractors supplying Major Equipment.

“Major Supply Agreements” means the agreements pursuant to which the Major Subcontractors will supply the Major Equipment.

“Material Adverse Change” means any change in condition after the Execution Date that has, or is reasonably likely to have, a significant adverse effect on: (a) the validity or enforceability of this Agreement, the Transaction Documents, or any of the other Project Company Contracts; (b) the business, assets, operations, property, or condition (financial or otherwise) of the Developer, Project Company, or the Project; (c) the Project’s ability to operate and deliver energy to the System; or (d) the performance of or the ability of Developer or Project Company to perform its respective obligations under the Transaction Documents or the Project Company Contracts to which it is a party. For the avoidance of doubt, other than that which cause a disproportionate effect on the Project or the Parties, the following will not be considered when determining whether a Material Adverse Change has occurred: any change, event, effect or occurrence (or changes, events, effects, or occurrences taken together) resulting from (i) any change generally affecting the international, national, or regional solar energy, supply chain, transmission, or distribution industry; (ii) any change generally affecting the international, national, or regional wholesale or retail markets for or costs of electric power; (iii) any change generally affecting the solar energy business; (iv) any change in general regulatory or political conditions, including any engagements of hostilities, acts of war, civil disturbances, or terrorist activities or changes imposed by a Governmental Authority associated with additional security; (v) any change in GAAP or other applicable accounting or auditing standards or industry standards; (vi) any change in the financial, banking, or securities markets (including any suspension of trading in, or limitation on prices for, securities on the New York Stock Exchange, American Stock Exchange, or Nasdaq Stock Market), or any change in the general national or regional economic financial conditions; or (vii) any actions or omissions required to be taken or not taken by Developer or the Project Company in compliance with this Agreement, the Transaction Documents, or otherwise consented to by, or at the written request of, Buyer pursuant to this Agreement.

“Material Update” has the meaning set forth in Section 9.4(b).

“Mechanical Completion” means the date upon which the Generating Facility achieves “Mechanical Completion” (as such term shall be defined in the EPC Contract), it being understood that, at a minimum, the requirements and criteria outlined in [Exhibit L] of this Agreement have been met.

¹³ Note to Draft: To be determined if applicable.

“Mechanical Completion Delay Liquidated Damages” has the meaning set forth in Section 17.2.

“Membership Interests” has the meaning set forth in the recitals to the Agreement.

“Milestone” has the meaning set forth in Section 11.1.

“Milestone Completion Dates” has the meaning set forth in Section 11.1.

“Module Supply” means [___].

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

“Other Construction Contracts” has the meaning set forth in Section 3.2(a)(xiii).

“Outside Closing Date” means [_____]; provided, that the Outside Closing Date shall be extended on a day for day basis to the extent of any extension of the Guaranteed Mechanical Completion Date pursuant to Section 17.2.

“Outside Firm Date” means [_____].

“Parent Guaranty” means a guaranty in the form of [Exhibit H] hereto from an Affiliate with an Investment Grade Credit Rating as Credit Support.

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

[“Performance Guarantee Tests” means [_____], all as set forth in [APPENDIX H] and intended, in each case, to determine whether the respective Performance Guarantees have been achieved.] ¹⁴

[“Performance Guarantees” means [_____], in each case as set forth in [APPENDIX H].] ¹⁵

“Permit” means any written authorization, approval, consent, waiver, exception, variance, order, notice, license, filing, registration, ruling, permit, tariff, certification, exemption, and other action by, to, or with any Governmental Authority.

“Permitted Equity Exceptions” means (a) restrictions on transfer of the Membership Interests under any applicable federal, state, or foreign security laws and (b) the Liens described in clauses (d), (g) and (k) of the definition of Permitted Encumbrances.

“Permitted Indebtedness” means (a) any Indebtedness that is (or will be) released on or prior to Closing and (b) any Indebtedness set forth on Schedule 6.9.

“Permitted Encumbrances” means any: (a) Lien for Taxes (i) not yet due and payable, or (ii) being contested in good faith and for which adequate reserves have been established and held by the Project Company in accordance with GAAP; (b) easements or other encumbrances on Real Property affecting the Project required to be granted (i) pursuant to applicable Laws or (ii) by order of a Governmental Authority, in each case not materially interfering and not reasonably likely to materially interfere with the development, construction, commissioning, ownership or operation of the Project; (c) mechanics’, materialmen’s (and other similar Liens for construction in progress),

¹⁴ Note to Draft: Applicability to be determined and built out in Exhibits.

¹⁵ Note to Draft: Applicability to be determined and built out in Exhibits.

carriers', workers', repairers', and other similar Liens arising or incurred in the ordinary course of business which are (i) not yet due and payable or (ii) being contested in good faith and for which adequate reserves have been established and held by the Project Company in accordance with GAAP; (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 Buyer, including any Liens expressly granted under, or created by, existing, or pursuant to, the terms and conditions of the Project Company Contracts or Project Company Permits included in Developer's disclosure schedules as of the Execution Date or in any Accepted Update; (f) Liens under any Contract executed with a Lender; (g) any Lien that is (or will be) released on or prior to Closing; (h) minor defects, easements, rights-of-way, restrictions, and other similar encumbrances and minor imperfections in title that do not impair the affected property or impair the development, construction, commissioning, ownership, and commencement of operation of the Project at the Project Site; (i) any fee mortgage (other than where the applicable Real Property is a fee) or ground lease or similar Lien that is superior to the interest granted under the applicable Real Property Document but is subject to a fully executed and recorded non-disturbance agreement reasonably acceptable to Buyer; (j) exceptions to title listed in any title commitment Made Available to Buyer prior to the Execution Date; (k) Liens arising by, through, or under Buyer, and (l) other Liens set forth on Schedule 1.1-A.

"Person" means any natural person, corporation, general or limited partnership, limited liability company, firm, joint venture, estate, association, trust, government, governmental agency, or any other entity, whether acting in an individual, fiduciary, or other capacity.

"Planned Nameplate Capacity" means [_____] megawatts (MWac), as set forth in [EXHIBIT A].

"Post-Closing Construction Payments" has the meaning set forth in Section 3.2(a)(xiii).

"Post-Closing EPC Contract Payments" has the meaning set forth in Section 3.2(a)(xii).

"Post-Construction Period Credit Support" has the meaning set forth in Section 8.1(c).

"Pre-Closing Date Credit Support" has the meaning set forth in Section [].

"Pre-Closing Tax Period" means any taxable year or other taxable period ending on or before the Closing Date.

"Pre-Closing Taxes" means (a) any Taxes imposed on or with respect to the Project Company, the Project Assets, or the Project with respect to any taxable period ending on or prior to the Closing Date and, in the case of any Straddle Period, the portion of such period ending on and including the Closing Date as calculated in accordance with Section 15.5(c); (b) any Taxes imposed on or with respect to the Developer, Contractor, any Subcontractor, or any of their respective Affiliates; (c) any Taxes for which Developer is responsible under Section 15.2 and Section 15.7; (d) any Claims and Liabilities attributable to a breach by Developer of any the Tax Benefit Representations or covenants pursuant to Section 10.2(c), Section 10.8(b), or ARTICLE 15; (e) any Taxes attributable to a breach by Developer of any of its representations, warranties, or covenants in this Agreement; (f) Taxes imposed on Buyer or any of its Affiliates, as a transferee or successor, by contract or pursuant to any Law, which Taxes relate to an event or transaction occurring prior to the close of business on the Closing Date; and (g) payment of any Tax by Buyer or any of its Affiliates as a result of any obligation to indemnify any other Person or as a result of any obligation under any agreement or arrangement (other than any obligation or indemnification for Tax pursuant to any Project Company Contract relating to a Tax period beginning after the Closing Date or the portion of any Straddle Period

beginning after the Closing Date) entered into with respect to the Project Company, the Project Assets or the Project on or prior to the Closing Date.

“Prevailing Wage and Apprenticeship Requirements” means the requirements under Code Sections 45(b)(7) and (8), Code Sections 45Y(g)(9) and (10), Code Sections 48(a)(10) and (11), and Code Sections 48E(d)(3) and (4) and any PWA Guidance.

“Pricing Buckets” has the meaning given in Section 3.3(b).

“Prime Rate” means the rate per annum (rounded upwards to the nearest 1/100th of 1% per annum) equal to the rate of interest which JP Morgan Chase in New York, New York or its successor announces from time to time as its “prime lending rate” or equivalent rate or if such rate is not available, another rate published as the “prime rate” as agreed by Buyer and Developer, with each change in such rate to be effective on the day on which such change is effective.

“Pro-ratable Items” has the meaning set forth in Section 3.3(c).

“Project” has the meaning set forth in the recitals of the Agreement.

“Project Assets” means all assets, properties, rights, and interests of every kind, nature, character and description (whether real, personal, or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site (as defined below)) and any goodwill related thereto, in each case, which relate to or are used or held for use in connection with the development, construction, operation, maintenance, repair, ownership, or use of the Project, including but not limited to: (a) the Books and Records of the Project Company; (b) the Real Property (including any leasehold interests, licenses, rights of way or easements) on which any portion of the Project is located or which is used to access any portion of the Project and including any Project real property agreements (collectively, the “Project Site”) and including any Project real property agreements; (c) the Project fixtures and equipment, including any buildings, fixtures and equipment on or associated with the Project Site; (d) all contracts, agreements or other arrangements to which Developer, Project Company (if applicable) or any of their affiliates is a party with respect to the Project, Project Site or any Project Asset (collectively the “Project Contracts”); (e) the Project improvements; (f) intellectual property necessary for the development, construction, operation, maintenance, repair, ownership or use of the Project; (g) the Project permits; (h) the Project reports; (i) meteorological data; (j) all interconnection rights; (k) any warranties associated with the equipment and/or workmanship of the Project; and (l) any and all attributes of the Project (including all Environmental Attributes, but excluding Tax Benefits).

“Project Company” has the meaning set forth in the recitals of the Agreement.

“Project Company Contracts” means any Contract to which any Project Company is a party, or by the terms of which any Project Company is bound, or to which the Project or any Project Assets are subject, including any (a) Contract that is primarily or exclusively related to the development, permitting, acquisition, design, installation, ownership, marketing, sale, or planned operation of the Project or Project Company; (b) Contract between Developer and any of its Affiliates concerning the Project or the related Project Assets; (c) teaming agreement in connection with the development of the Project; (d) interconnection or transmission-related agreements or applications for interconnection or transmission of or from the Project; (e) any agreement for the sale of power or Environmental Attributes of the Project, (f) the EPC Contract; (g) exclusivity agreements with any contractor, or other supplier or utility to which the Project Company is bound; (h) contract providing

for the borrowing of Indebtedness or the mortgaging, pledging or otherwise placing a Lien on any of the Project Assets, or the guarantying of any obligation (other than endorsements made for collection) or otherwise material and related to any Indebtedness; (i) contract that provides for non-monetary obligations in connection with the Project or Project Assets, the non-performance of which obligations could reasonably be expected to have a Material Adverse Change; (j) lease, license, easement, or other real property interest necessary for the installation or operation of the Project, including any Real Property Documents; (k) any agreement with or award from a Governmental Authority with respect to environmental, financial, or tax incentives; (l) any warranty agreement with respect to the procurement of Equipment for the Project; and (m) amendment or supplement to any of the foregoing.

“Project Company Required Consents” means the consents or other approvals of any Governmental Authorities or other Persons specified in Schedule 6.18.

“Project Company Permits” has the meaning set forth in Section 6.14(a).

“Project Contracts” has the meaning set forth in the definition of “Project Assets.”

“Project Contracts Closing Payment” has the meaning set forth in Section 3.4(b).

“Project Schedule” has the meaning set forth in Section 11.1.

“Project Site” has the meaning set forth in the definition of “Project Assets.”

“Proposed Purchase Price Allocation” has the meaning set forth in Section 15.3.

“Prudent Construction Management Practices” means the degree of care, skill, and diligence under the circumstances then prevailing that a reasonable and prudent construction manager of solar project of a type and size and having geographical and climatic attributes similar to the Project would exercise in the performance of construction management activities of a like character to the Construction Management Services. Prudent Construction Management Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others but, rather, to be a spectrum of generally acceptable industry practices, methods, or acts.

“Prudent Industry Practice” means any of the practices, methods, and acts relating to construction, interconnection, and electrical work engaged in or approved by a significant portion of the solar project industry in the United States, including the Pacific Northwest, for photovoltaic power projects of a type and size and having geographical and climatic attributes similar to the Project which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices and reliability criteria, safety considerations and expediency. Prudent Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others but, rather, to be a spectrum of generally acceptable industry practices, methods, or acts.

“PTC” means the renewable electricity production credit pursuant to Section 45 of the Code or the clean electricity production credit pursuant to Section 45Y of the Code.

“PUHCA” means the Public Utility Holding Company Act of 2005, enacted as part of the Energy Policy Act of 2005, Pub. L. No. 109-58, as codified at § 1261 et seq., and the rules and regulations thereunder, as they may be amended from time to time.

“Purchase Price” has the meaning set forth in Section 3.3(b).

“PWA Guidance” means IRS Notice 2022-61, 2022-52 I.R.B 560 (Nov. 30, 2022), as may be modified or supplemented, proposed Treasury regulations under REG-100908-23, RIN 1545-BQ54 (August 30, 2023), and any other regulations or additional guidance on the requirements under Code Sections 45(b)(7) and (8), Code Sections 45Y(g)(9) and (10), Code Sections 48(a)(10) and (11), and Code Sections 48E(d)(3) and (4).

“Qualified Apprentice” means an individual who is employed by the Developer or by a contractor or subcontractor and who is participating in a Registered Apprenticeship Program.

“Quarterly Prevailing Wage and Apprenticeship Certificate” has the meaning set forth in Section 10.8(b).

“Real Property” means all real property and interests in real property (including any leasehold interests, licenses, rights of way, or easements, and including the rights and interests in the Real Property Documents) to develop, construct, commission, own, and commence operations of the Project at the Project Site.

“Real Property Documents” has the meaning set forth in Section 6.15(a).

“Real Property Estoppels” has the meaning set forth in Section 3.2(a)(v).

“Receiving Party” has the meaning set forth in Section 24.1(a).

“Registered Apprenticeship Program” has the meaning given to such term in Section 3131(e)(3)(B) of the Code and any PWA Guidance.

“Regulated Materials” means any substance, material, or waste, including special waste, listed, defined, or regulated in any manner as hazardous, extremely hazardous, corrosive, toxic, ignitable, explosive, radioactive, or flammable by any United States federal, state or local Environmental Law and includes any oil, petroleum, petroleum products, polychlorinated biphenyls, asbestos in any form, and polyfluorinated and per fluorinated aromatic compounds.

“Release” means any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, or other movement of Regulated Material into the environment.

“Releasee” has the meaning set forth in Section 25.2.

“Releasor” has the meaning set forth in Section 25.2.

“Renewable Energy Credits” means any credit, certificate, renewable energy certificate, allowance, offsets or other benefits allocated or similar right that represents the Environmental Attributes associated with the Project (known or unknown), that may be assigned or otherwise awarded or certified to Contractor or Buyer by any Governmental Authority, program administrator or other certification board or other Person generally recognized in the renewable energy industry in connection with the Project, including “renewable energy credits” and/or “alternative energy credits” as defined under certain state statutes and all rights to report ownership of such in compliance with federal, state or local laws and regulations, including arising pursuant to private transaction or renewable portfolio standards or voluntary compliance programs, any reporting

rights accruing under §1605(b) of the Energy Policy Act of 1992 and any present or future federal, state or local law or regulation, or international or foreign emissions trading programs, which includes the “Green-e Energy Program” administered by Green-e or the Western Renewable Energy Generation Information System (“WREGIS”).

“Repair or Alteration” means alteration or repair work as such terms are used in Code Sections 45(b)(7) and (8), Code Sections 45Y(g)(9) and (10), Code Sections 48(a)(10) and (11), and Code Sections 48E(d)(3) and (4) and any PWA Guidance.

“Reports” means the Phase I Environmental Site Assessment, as well as all other environmental impact studies, geotechnical reports, interconnection system impact studies, cultural assessments, hydrology reports, and wetland delineation reports, in each case, with respect to the Project and the Project Site.

“Requested Permits” has the meaning given to it in Section 6.14(b).

“Requirements” means Prudent Industry Practices, applicable Laws, Project Company Permits, and the obligations or other requirements (including the Major Equipment Warranties) set forth in the EPC Contract, the Major Supply Agreements and this Agreement.

“Scope of Work” has the meaning set forth in the [APPENDIX A].

“Site Plans” means the site plans for the Project set forth as [Exhibit Q] attached hereto; *provided*, that, effective as of the Closing Date, the Site Plans shall automatically and without further action on the part of any Party be amended to reflect the site plan provided pursuant to the EPC Contract (as defined therein).

“State Apprenticeship Agency” means “State Apprenticeship Agency” as defined under 29 CFR 29.2.

“Straddle Period” means a taxable period that includes but does not end on the Closing Date.

“Subcontractor” means any Person (including vendors, suppliers, contractors, and consultants), other than Contractor, retained by Developer or Contractor, including the Major Subcontractors.

“Substantial Completion” has the meaning set forth in the EPC Contract.

“Substantial Completion Date” means the date upon which the Project achieves “Substantial Completion” (as such term shall be defined in the EPC Contract), it being understood that, at a minimum, the requirements and criteria outlined in [Exhibit M] of this Agreement have been met.¹⁶

“Substantial Completion Payment” has the meaning set forth in Section 3.4(e)(iii).

“Support Obligations” means each credit support obligation set forth on Schedule 7.6.

“System” means the electric transmission sub-station and distribution facilities owned, operated, or maintained by Transmission Provider, which shall include, after construction and installation of the

¹⁶ Note to Draft: Exhibit M will include that Substantial Completion cannot be declared unless at least [__]% of the Planned Capacity has been commissioned.

Project, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to complete the Project, all as set forth in the Interconnection Agreement.

“Tax” or “Taxes” means any and all U.S. federal, state, local, non-U.S., or other taxes, charges, fees, levies, tariffs, duties, liabilities, impositions, or other assessments in the nature of a tax (together with any and all interest, penalties, additions to tax, and additional amounts imposed relating or attributable to any failure to comply with any requirement regarding Tax Returns) imposed by any tax authority or other Governmental Authority, including income, gross receipts, profits, excise, real or personal property, environmental, sales, use, value-added, ad valorem, withholding, social security, retirement, rollback, employment, unemployment, customs duties, worker’s compensation, occupation, escheat, unclaimed property, recapture, service, license, net worth, capital stock, payroll, franchise, gains, stamp, transfer and recording taxes, and shall include any liability for the Taxes of any other person or entity under Treasury Regulations Section 1.1502-6 (or similar provisions of state or local law), or as a transferee or successor, by indemnification, contract, or otherwise.

“Tax Benefit” means the 30% ITC, 100% PTC, accelerated depreciation (including bonus depreciation), amortization and state level credits, deductions, and incentives.

“Tax Benefit Representations” means the representations and warranties set forth in Section 6.17 and in the Quarterly Prevailing Wage and Apprenticeship Certificates, as applicable.

“Tax Returns” means any return, declaration, report, Claim for refund, or information return or statement relating to Taxes, in each case, including any such document prepared on a consolidated, combined, or unitary basis and also including any schedule or attachment thereto, filed or maintained, or required to be filed or maintained, in connection with the calculation, determination, assessment, or collection of any Tax and includes any amended returns required as a result of examination adjustments made by the IRS or other Governmental Authority.

“Title Company” means [_____] ¹⁷ or such other title insurance company reasonably acceptable to Buyer and Developer.

“Title Policy” means a title insurance policy issued by the Title Company at Developer’s expense (except as set forth herein) insuring Project Company’s leasehold, easement and fee simple interests, as applicable, in the Real Property (including any Easements as insured appurtenant easement estates) that (a) is in form and substance and contains such requirements and modifications as Buyer may reasonably approve, (b) contains such additional affirmative coverage and endorsements as Buyer may reasonably request, including, without limitation, a customary nonimputation endorsement (at Buyer’s cost and expense, except that the nonimputation endorsement and any affidavits and/or indemnities required by the Title Company to deliver the Title Policy, including the nonimputation endorsement, shall be Developer’s responsibility), (c) provides coverage in such amount as Buyer may negotiate with the Title Company, provided that Developer’s responsibility for any Title Policy premiums shall be based on an insured amount which shall in no event exceed the Purchase Price, (d) insures that Project Company is the holder (or sole holder with respect to the leasehold and fee simple estates) of all insured leasehold, easement and fee simple rights, as applicable, title and interests with respect to the Real Property, (e) names Project Company as the insured, (f) is issued as of the Closing Date by the Title Company, (g) shows as exceptions only Permitted Encumbrances, and (h) does not contain the standard pre-printed exceptions that appear in the related title insurance commitment, which are able to be deleted with the delivery of affidavits

¹⁷ Note to Draft: To be provided.

and certifications to be signed or obtained by Developer, and a current survey, each in form acceptable to the Title Company.

“Transaction” means the consummation and execution of the Agreement and the Transaction Documents.

“Transaction Documents” means once executed and in full force and effect, this Agreement, the Assignment and Assumption Agreement, and any other assignments, certificates, novation agreements, delegation agreements, conveyances, and other ancillary documents necessary to effect the transaction contemplated herein; provided, that the Project Company Contracts shall not be considered Transaction Documents hereunder.

“Transfer Taxes” has the meaning set forth in Section 15.2.

“Transmission Provider” means [BPA]¹⁸ in its capacity as “Transmission Provider” under the Interconnection Agreement.

“Treasury Regulations” means the United States Treasury Regulations promulgated under the Code.

“Update” has the meaning set forth in Section 9.4(a).

“WAC 296-140” has the meaning given to it in Section 10.2(c).

“Warranty” has the meaning set forth in Section 16.1.

“Warranty Period” has the meaning set forth in the EPC Contract.

“Work” has the meaning set forth in the EPC Contract.

1.2 Interpretation.

(a) Unless the context requires otherwise, in this Agreement:

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

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

(iii) 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.

(iv) 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 Appendix, Article, Section, Exhibit, Schedule, or provision in which the

¹⁸ Note to Draft: To be confirmed.

relevant reference appears and to this Agreement as amended, modified, supplemented, or replaced from time to time.

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

(vi) References to the term “includes” or “including” shall mean “includes, without limitation” or “including, without limitation.”

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

(viii) 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 “or” rather than “either/or”).

(ix) The terms “shall” and “will” are each mandatory, meaning must; and the term “may” is permissive.

(x) 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.”

(xi) 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.

(xii) 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.

(xiii) References to any amount of money shall mean a reference to the amount in United States Dollars.

(xiv) Any reference in this Agreement to time of day refers to the prevailing Mountain Time.

(xv) Unless specifically stated to the contrary, all references to days, months and years in this Agreement refer to calendar days, months, and years, respectively.

(xvi) The Parties have participated jointly in drafting and negotiating this Agreement. In the event that 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 the authorship of any provision hereof.

ARTICLE 2

FIRM DATE AND NOTICE TO PROCEED

2.1 Firm Date.

(a) Following the Execution Date, each Party shall use commercially reasonable efforts to ensure the achievement of the “Firm Date,” which shall be the first date on which all of the

following conditions ("Firm Date Conditions") have been satisfied (or waived by the Party entitled to do so), but in no event shall the Firm Date extend beyond the Outside Firm Date:

(i) **Buyer and Developer Firm Date Conditions.** The following conditions must be satisfied or otherwise waived in whole or in part by either Party in its sole discretion:

(A) The final form and execution ready version EPC Contract has been mutually agreed to by Project Company and Contractor, and Buyer has approved such form; and

(B) [Any other applicable conditions to be added here];

(ii) **Buyer Firm Date Conditions.** The following conditions must be satisfied or otherwise waived by Buyer in its sole discretion:

(A) Developer's representations and warranties are true and correct as of the Firm Date in all material respects except for Developer's Fundamental Representations and Tax Benefit Representations, which will be true and correct in all respects;

(B) Developer has delivered Buyer a certificate of a duly authorized officer of Developer certifying Section 2.1(a)(ii)(A) and 2.1(a)(ii)(C);

(C) Developer has performed its obligations in the Agreement to be performed prior to the Firm Date in all material respects;

(D) No Material Adverse Change shall have occurred since the Execution Date;

(E) The Parties have agreed upon a proforma Title Policy; and the Title Company is unconditionally committed to issue the Title Policy in the form of the approved proforma upon payment of the premiums therefor;

(F) Developer has delivered all Quarterly Prevailing Wage and Apprenticeship Certificates required to be delivered through the Firm Date;

(G) Developer has finalized the Major Supply Agreements in a form and substance that is satisfactory to the Buyer;

(H) Developer has finalized the EPC Contract in a form and substance that is satisfactory to the Buyer;

(I) Developer has provided Buyer with all final and unappealable Discretionary Permits in accordance with this Agreement;

(J) Developer has executed and delivered to Buyer, the Interconnection Agreement in a form and substance that is satisfactory to the Buyer; and

(K) [other relevant conditions to be inserted]¹⁹.

(iii) **Developer Firm Date Conditions.** The following conditions must be satisfied or otherwise waived by Developer in its sole discretion:

(A) Buyer's representations and warranties are true and correct as of the Firm Date in all material respects except for Buyer's Fundamental Representations, which will be true and correct in all respects;

(B) Buyer has delivered Developer a certificate of a duly authorized officer of Buyer certifying Section 2.1(a)(iii)(A) and 2.1(a)(iii)(D);

(C) No Buyer Material Adverse Change shall have occurred since the Execution Date; and

(D) Buyer has performed its obligations under the Agreement to be performed prior to the Firm Date in all material respects.

(b) The Parties agree to memorialize the occurrence of the Firm Date in writing.

2.2 Full Notice to Proceed.

[Within five (5) Business Days] following the later of (a) the execution of the EPC Contract and (b) the Firm Date, the Project Company shall issue the Full Notice to Proceed.

ARTICLE 3 PURCHASE AND SALE OF MEMBERSHIP INTERESTS

3.1 Sale and Transfer of Membership Interests.

On the terms and subject to the conditions set forth in this Agreement, Developer shall sell, convey, transfer, deliver, and assign to Buyer, and Buyer shall purchase, receive, and accept from Developer, the Membership Interests, free and clear of all Liens, at the Closing, and the Parties shall take or cause to be taken the other actions described herein.

3.2 Closing Deliverables.

(a) Developer's Deliverables. At the Closing, Developer shall execute and deliver (or otherwise cause to be delivered) to Buyer the following documents and such other documents, bills of sale, assignments, and other instruments of transfer or assignment:

(i) a counterpart signature page to an assignment and assumption agreement with respect to the Membership Interests (the "Assignment and Assumption Agreement"), in form and substance set forth in [EXHIBIT B], duly executed by an officer of Developer;

(ii) a duly completed and executed IRS Form W-9 of Developer (or if Developer is an entity disregarded as separate from its owners for federal income tax purposes, such regarded owner);

¹⁹ Note to Draft: To be provided based on discussion between Parties.

(iii) one or more certificates of duly authorized officers of Developer certifying that: (A) attached thereto is a true, correct, and complete copy of a certificate of good standing with respect to Developer, issued by the Secretary of State of [Delaware] as of a date not more than ten (10) days prior to the Closing Date; (B) attached thereto are true, accurate, and complete copies of the organizational documents of Developer, and all amendments thereto, as in effect at Closing; (C) attached thereto are copies of resolutions duly adopted by the sole member of Developer, authorizing the sale of the Membership Interests to Buyer and the execution, delivery, and performance by Developer of this Agreement and the transactions contemplated hereby and confirming that such resolutions are in full force and effect without amendment or modification at Closing; (D) attached thereto is the name, title, and signature of each officer of Developer authorized to execute and deliver this Agreement and the Transaction Documents, and any other document or instrument contemplated hereby or thereby, by or on behalf of Developer; and (E) the conditions specified in Section 3.6(a) and Section 3.6(b) have been satisfied;

(iv) a certificate of the sole member or an authorized officer of the Project Company certifying that: (A) attached thereto is a true, correct, and complete copy of a certificate of good standing with respect to Project Company, issued by the Secretary of State of Washington as of a date not more than ten (10) days prior to the Closing Date; (B) attached thereto are true, accurate, and complete copies of the organizational documents of Project Company, and all amendments thereto, as in effect at Closing; and (C) attached thereto is the name, title, and signature of each officer of the Project Company authorized to execute and deliver the Transaction Documents and any other document or instrument contemplated hereby or thereby, to be executed and delivered by the Project Company;

(v) an updated title commitment for the Title Policy issued with an effective date no earlier than five (5) Business Days before the Closing Date; provided that any new exceptions reflected in such title commitment arising after the Firm Date but prior to the Closing Date which (A) are not Permitted Encumbrances and (B) have or are reasonably expected to have a Material Adverse Change on the Project, will be cured or removed by Developer prior to the Closing Date and will not be shown as exceptions to the Title Policy;

(vi) an ALTA/ACSM standard survey of the Real Property, dated no more than thirty (30) days before the date Full Notice to Proceed is issued, in accordance with minimum ALTA/ACSM standards then in effect and sufficient in form and substance reasonably approved by Buyer and sufficient to permit the issuance of the Title Policy, prepared and certified as correct by a licensed land surveyor reasonably satisfactory to Buyer, addressed to Project Company, Buyer, the Title Company and any other parties reasonably requested by Buyer. Such survey shall show the location of the Project Site and all planned improvements based on the issued for construction civil engineering plans for the Project thereon, and the location of all easements and rights-of-way, whether above or underground, and shall show no encroachments of any improvements onto such easements or rights-of-way (except as permitted under the documents governing such easements and rights-of-way or pursuant to a consent, crossing agreement, or similar agreement) or onto property outside the boundaries of the Project Site as shown on the survey;

(vii) estoppels, in substantially the form attached at [Exhibit N], from Contractor, dated no more than fifteen (15) days prior to the Closing, which shall include a statement that there are no Change Orders anticipated in the estoppel and that the EPC Contract is in full force and effect (the "EPC Estoppel");

(viii) estoppels, in substantially the form attached at [Exhibit O], from the Major Subcontractors, dated no more than fifteen (15) days prior to the Closing, which shall include a statement that there are no Change Orders anticipated in the estoppel and that the EPC Contract is in full force and effect (the “Subcontractor Estoppel”);

(ix) estoppels, in substantially the form attached at [Exhibit P] and otherwise sufficient for the Title Company to issue the Title policy, from each applicable counterparty to the Real Property Documents and dated no more than sixty (60) days prior to the Closing Date (or as may otherwise be required by the Title Company to issue the Title Policy), each of which shall include a statement that the respective Real Property Document is in full force and effect (the “Real Property Estoppels”);

(x) any Books and Records of the Project Company;

(xi) a letter of resignation for all managers, officers and directors of the Project Company;

(xii) such other certificates, instruments and documents evidencing the consummation of the transactions contemplated by this Agreement as Buyer has reasonably requested from Developer to carry out the intent and purposes of this Agreement;

(xiii) a certificate, executed by the Developer and the Contractor, in form and substance reasonably satisfactory to Buyer, with a full accounting of all sums paid under the EPC Contract and detailing all remaining payments to be made under the EPC Contract in order to fully satisfy all payments and obligations of the Project Company thereunder through Final Acceptance of the Project, including any amounts constituting Buyer Construction Costs, which shall be separately identified (the aggregate amount of such remaining payments, net of such separately identified Buyer Construction Costs, collectively the “Post-Closing EPC Contract Payments”);

(xiv) a certificate, executed by the Developer and each counterparty to a Project Company Contract (excluding any Real Property Document) pursuant to which Construction Costs have or will be incurred (such Project Company Contracts, the “Other Construction Contracts”), if any, in form and substance reasonably satisfactory to Buyer, with a full accounting of all sums paid under such Other Construction Contract and detailing all remaining payments for Construction Costs to be made under such Other Construction Contract in order to fully satisfy all payments and obligations of the Project Company thereunder through Final Acceptance of the Project, including amounts constituting Buyer Construction Costs, which shall be separately identified (the aggregate amount of such remaining payments, net of such separately identified Buyer Construction Costs and together with the Post-Closing EPC Contract Payments, the “Post-Closing Construction Payments”); and

(xv) all Quarterly Prevailing Wage and Apprenticeship Certificates required to be delivered through the Closing Date, to the extent not already delivered to Buyer pursuant to Section 10.8(b).

(b) Buyer’s Deliverables. At the Closing, Buyer shall execute and deliver to Developer the following documents and such other documents, deeds, bills of sale, assignments, and other instruments of transfer or assignment:

(i) a counterpart signature page to the Assignment and Assumption Agreement, duly executed by an officer of Buyer; and

(ii) a certificate of the Secretary or an Assistant Secretary of Buyer certifying that: (A) attached thereto is a true, correct, and complete copy of a certificate of good standing with respect to Buyer, issued by the Secretary of State of the State of Washington as of a date not more than ten (10) days prior to the Closing Date; (B) attached thereto are copies of resolutions duly adopted by Buyer's board of directors (or similar body), authorizing the purchase of the Membership Interests by Buyer and the execution, delivery, and performance by Buyer of this Agreement and the transactions contemplated hereby and attesting that such resolutions are in full force and effect without amendment or modification at Closing; (C) attached thereto is the name, title, and signature of each of the officers of Buyer authorized to execute and deliver this Agreement and the Transaction Documents, and any other document or instrument contemplated hereby or thereby; and (D) the conditions specified in Section 3.7(a) and Section 3.7(b) have been satisfied.

3.3 Purchase Price.

(a) Base Purchase Price. Subject to Section 3.3(b), the aggregate consideration payable by Buyer to Developer for (i) the Membership Interests and (ii) the Developer's obligations to deliver a Project that has achieved Mechanical Completion shall be \$[_____] (the "Base Purchase Price"), subject to adjustment as set forth below.

(b) The Base Purchase Price shall be adjusted as follows (as so adjusted, the "Purchase Price"):

(i) [increased or decreased, as applicable, for Buyer's or Developer's net pro-rata share of the "Pro-Ratable Items" which include each of those Project-related liabilities as set forth on Schedule 3.3(c). Buyer's pro-rata share shall not exceed the amount set forth on Schedule 3.3(c).];

(i) decreased by the amount of any Mechanical Completion Delay Liquidated Damages incurred by Developer pursuant to Section 17.2 and not paid by Developer to Buyer prior to Closing;

(ii) increased or decreased, as applicable, using the following formula: (a) the Base Purchase Price, *multiplied by* (b) the ratio of (i) the Planned Nameplate Capacity *minus* the actual Final Nameplate Capacity *divided by* (ii) the Planned Nameplate Capacity.

(c) Buyer Requested Scope Changes. Any price changes that are caused by scope changes requested by Buyer after the Execution Date (the "Buyer Requested Scope Changes") shall be added to the Purchase Price and will be included in the Purchase Price Adjustments. Any Buyer Requested Scope Changes will be documented using a Change Order, executed by both Parties, which shall include adjustments to the Guaranteed Milestone Dates, the Outside Firm Date and the Outside Closing Date, as applicable; provided that, the benefit of any Buyer Requested Scope Changes that result in lower costs will be allocated 100% to the Buyer.

(d) Final Purchase Price. The Purchase Price will consist of two payments and will be divided among the Closing Payment and the payment due at Substantial Completion (the "Substantial Completion Payment"). Both the Closing Payment and the Substantial Completion Payment shall be subject to the pricing adjustments as set forth in Section 3.3 and Section 3.4 of this Agreement. For

clarity, Developer acknowledges and agrees that Developer shall be obligated to deliver the Project irrespective of the actual costs incurred or otherwise payable by Developer or its Affiliates (including the Project Company) under the Project Company Contracts or otherwise. In addition, Developer acknowledges and agrees that certain payment obligations that would otherwise be the responsibility of Developer shall be paid directly by Buyer to the Contractor, both at Closing and at Substantial Completion, and deducted from the amounts otherwise payable to Developer but otherwise in full satisfaction thereof, all as further set forth below in Section 3.4. Developer shall not be responsible for the payment of Buyer Construction Costs.

3.4 Closing and Payment Structure.

(a) Closing Date, Place and Time. The closing of the transactions contemplated by this ARTICLE 3 (the “Closing”) shall take place via the electronic exchange of documents and signatures at 10:00 a.m. (Pacific Time) on the date that is three (3) Business Days after the date that all of the conditions precedent set forth in Section 3.6 and Section 3.7 have been satisfied (or waived in writing by Buyer or Developer, as applicable), which date shall be on or before the Outside Closing Date, or at such other time and date as the Parties shall mutually designate in writing (the “Closing Date”). The Closing shall be effective as of 12:01 a.m. (Pacific Time) on the Closing Date.

(b) Funds Flow Statement. No later than five (5) Business Days prior to the anticipated Closing Date, Developer shall furnish to Buyer the certificates contemplated by Section 3.2(a)(xii), and Section 3.2(a)(xiii) as well as a draft flow of funds statement in the form of [EXHIBIT J], setting forth (i) the Purchase Price (as adjusted), (ii) the aggregate amount of the Post-Closing Construction Payments, (iii) that portion of the Post-Closing Construction Payments then due and owing or otherwise payable upon the achievement of Mechanical Completion (such amount, as finally agreed by the Parties, the “Project Contracts Closing Payment”), (iv) any hold back amount for outstanding Change Orders, and (v) to the extent applicable in accordance with Section 17.2(c), any hold back amount for the maximum amount of the possible Capacity Shortfall Payment, if any. Developer shall include such additional information and documentary evidence as may be reasonably necessary to document the amounts set forth on the draft flow of funds statement, and the Parties shall cooperate in good faith to mutually agree upon such flow of funds statement as soon as practicable (it being understood that agreement upon such statement shall be a condition to the occurrence of the Closing). The flow of funds statement shall provide for the direct payment by Buyer of the Project Contracts Closing Payment, as allocated to the Contractor and any other applicable counterparties to the Other Construction Contracts, if any, as applicable.

(c) Excess Project Completion Costs. The structure of the Closing Payment in this Section 3.4 presumes that [fifty percent (50%)] of the payment amount due at Substantial Completion will be allocated to post-Mechanical Completion construction costs. If, at the Closing Date, the post-Mechanical Completion construction costs exceed [fifty percent (50%)] of the payment amount that would otherwise be due at Substantial Completion (such excess, the “Excess Project Completion Costs”), then the Closing Payment will be decreased and the Substantial Completion Payment will be increased, respectively, such that the Substantial Completion Payment is increased by an amount equal to [two hundred (200%) of the Excess Completion Costs]²⁰. For the avoidance of any doubt, in the event that the post-Mechanical Completion construction costs are less than [fifty percent (50%)] of the payment amount that would otherwise be due at Substantial Completion, there will be no adjustment. Furthermore, both the Mechanical Completion payment and the Substantial Completion

²⁰ Note to Draft: Calculation to be determined in applicable to Form.

Payment will be subject to reduction by the amount of any sales tax refunds contemplated or received by Seller up until the financial quarter in which the payments are to occur.

(d) Closing Payment. At the Closing Date, Buyer shall pay to Developer (1) an amount equal to: (i) [_____] % of the Purchase Price (calculated for this purpose using the Nameplate Capacity as to which Mechanical Completion has been achieved) less (ii) the amount of Excess Project Completion Costs, if any, less (iii) the aggregate amount held back for any outstanding Change Orders, if any (the "Closing Payment"), and (2) in addition to the amount in (1), the amount of any Buyer Construction Costs paid by Developer prior to the Closing Date, if any (which shall be paid in the manner set forth on the flow of funds statement agreed pursuant to Section 3.4(b)), via wire transfer of immediately available federal funds to an account that is (A) located in the United States and (B) designated by Developer at least three (3) Business Days prior to the Closing Date. Developer acknowledges and agrees that certain payment obligations that would otherwise be the responsibility of Developer shall be paid directly by Buyer to the Contractor and Other Construction Contract counterparties, as applicable, in accordance with the funds flow statement agreed pursuant to Section 3.4(b).

(e) Substantial Completion Payment.

(i) As soon as reasonably practicable after Developer's delivery of the EPC Certificate of Substantial Completion in accordance with ARTICLE 12 and [EXHIBIT G], Developer shall furnish to Buyer one or more certificates, executed by Developer and the Contractor, in form and substance reasonably satisfactory to Buyer, with a full accounting of all sums paid under the EPC Contract and any Other Construction Contracts and detailing all remaining payments to be made under the EPC Contract and any Other Construction Contracts, respectively, in order to fully satisfy all payments and obligations of the Project Company thereunder through Final Acceptance of the Project, excluding therefrom any amounts constituting Buyer Construction Costs, which shall be separately identified and certified by Developer (the aggregate amount of such remaining payments, net of such separately identified Buyer Construction Costs, collectively the "Post-Substantial Completion Project Contract Payments").

(ii) Concurrently with the delivery of the certificates contemplated by Section 3.4(e)(i) above, Developer shall furnish to Buyer a draft flow of funds statement in the form of [EXHIBIT K], setting forth (A) the aggregate amount of the Post-Substantial Completion Project Contract Payments and (B) that portion of the Post-Substantial Completion Project Contract Payments then due and owing or otherwise payable upon the achievement of Substantial Completion (such amount, as finally agreed by the Parties, the "Project Contracts Substantial Completion Payment"). Developer shall include such additional information and documentary evidence as may be reasonably necessary to document the amounts set forth on the draft flow of funds statement, and the Parties shall cooperate in good faith to mutually agree upon such flow of funds statement as soon as practicable (it being understood that agreement upon such statement shall be a condition to the payment of the Substantial Completion Payment). The flow of funds statement shall provide for the direct payment by Buyer of the Project Contracts Substantial Completion Payment, as allocated to the Contractor and Other Construction Contract counterparties, as applicable.

(iii) Subject to Section 4.1(c), and in full and final satisfaction of Buyer's payment obligation hereunder with respect to the Purchase Price, within five (5) Business Days after the Buyer's Engineer certifies that the Project has achieved Substantial Completion, Buyer

will pay to Developer an amount equal to (A) the Purchase Price, less (B) the Closing Payment, less (C) the Post-Substantial Completion Project Contracts Payments (the “Substantial Completion Payment”). And Buyer shall pay directly the Project Contracts Substantial Completion Payment (which shall be paid in the manner set forth on the flow of funds statement agreed pursuant to Section 3.4(e)(ii)).

3.5 Further Assurances.

From time to time after the Closing Date, each Party shall, at the request of the other Party but without further consideration, promptly execute and deliver to the other Party such other agreements, certificates and further instruments, and take such other and further actions as the other Party may reasonably request, to carry out and effectuate the transactions and terms hereunder, including Developer delivering such instruments of sale, assignment, transfer, and conveyance and taking such other and further actions as Buyer may reasonably request in order to vest or perfect in Buyer or its assigns, and put Buyer or its assigns in possession of, the Membership Interests, the Project Assets, and the Project Company Contracts.

3.6 Conditions Precedent to Buyer’s Obligation to Complete the Closing.

The obligation of Buyer to effect the Closing and the transactions contemplated in this ARTICLE 3 is subject to the satisfaction or waiver by Buyer on or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties made by Developer in this Agreement that are qualified with respect to materiality shall be true and accurate in all respects and the representations and warranties made by Developer in this Agreement that are not so qualified shall be true and accurate in all material respects; provided, that the Fundamental Representations made by Developer and the Tax Benefit Representations shall be true and correct in all respects, in each case 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).

(b) Performance. Developer shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Deliveries. Developer shall have executed and Made Available or caused to be executed and Made Available to Buyer the items set forth in Section 3.2(a) and any other final reports and Design Documents required to be delivered on or prior to the Closing Date.

(d) Absence of Orders; Law. No preliminary or permanent injunction or other Judgment of any Governmental Authority to prevent the consummation of the transactions contemplated by this Agreement, including the Closing, shall be in effect or pending, and no applicable Law shall have been enacted by any Governmental Authority that makes consummation of such transactions illegal.

(e) Transaction Documents and Credit Support. All of the Transaction Documents to which Developer or the Project Company is a party (together with all amendments, supplements, schedules, and exhibits thereto) shall have been executed and delivered by Developer and the Credit Support shall be provided by Developer in accordance with ARTICLE 8, and each shall be in form and substance substantially similar to the form attached hereto or otherwise satisfactory to Buyer in its reasonable discretion.

(f) Permits. All of the Project Company Permits and Required Permits necessary for the development, construction, ownership, and operation of the Project as contemplated as of the Closing shall have been duly issued and obtained and shall be in full force and effect and shall be in form and substance satisfactory to Buyer in its reasonable discretion.

(g) Delivery of Search Results. Developer shall have provided to Buyer all results and summaries from all customary Lien and litigation searches in form and substance satisfactory to Buyer in its reasonable discretion (and such searches are to be conducted no earlier than fifteen (15) Business Days prior to the Closing Date).

(h) Lien Removal. Developer shall have removed and or settled with sufficient confirmation and evidence, in form and substance satisfactory to Buyer in its reasonable discretion, all Liens that the Project may be subject to.

(i) Developer Consents. All of the Developer Consents shall have been duly obtained, made or given, shall be in full force and effect, and shall be in form and substance satisfactory to Buyer in its reasonable discretion.

(j) Project Company Reports. All of the Reports issued since the Execution Date shall be in form and substance satisfactory to Buyer in its reasonable discretion.

(k) Material Adverse Change. No Material Adverse Change shall have occurred since the Firm Date and be continuing.

(l) Mechanical Completion. The Project shall have achieved Mechanical Completion, as certified by the Independent Engineer, and Developer shall have Made Available to Buyer a draft report concerning the solar energy potential of the Project prepared by the Independent Engineer.

(m) Project Schedule. The Independent Engineer has certified that the Project Company Contracts and progress under the EPC Contract support achievement of Substantial Completion on or prior to the date that is [one hundred twenty] ([120]) days after Mechanical Completion.

(n) No Synchronization. The Project has not, in whole or in part been synchronized to the electric transmission system.

(o) Project Company Contracts. The Project Company Contracts, including the EPC Contract and the Major Supply Agreements shall be in full force and effect, in form and substance required by this Agreement, without any modifications, amendments, or change orders thereto, other than such modifications, amendments, or change orders that have been approved by Buyer in writing or which do not require Buyer's approval pursuant to this Agreement, and no party to the Project Company Contracts shall be in material breach.

(p) Conformity with Standards. Developer has certified to Buyer that to Developer's Knowledge, the Project conforms to applicable engineering and installation standards set forth herein, including the Technical Specifications [(as defined in APPENDIX A)] and applicable Laws, and the Developer has no knowledge of any unremedied defects in workmanship or equipment caused by the Contractor or Subcontractors with respect to the Project.

(q) Phase I ESA. Developer has delivered to Buyer a Phase I Environmental Site Assessment conducted in accordance with ASTM Standard Practice E1527-13 (and, if indicated in the Phase I Environmental Site Assessment, a Phase II Environmental Site Assessment) with respect to the Project Site, current and valid no earlier than one hundred eighty (180) days prior to the Closing

Date, accompanied with a reliance letter addressed to Buyer, and incorporating user-provided information from Buyer in form and substance reasonably satisfactory to Buyer.

(r) Interconnection Agreement. The Interconnection Agreement shall have been executed between [BPA] and the Project Company to provide for the provision of interconnection service to the Project Company, in a form reasonably acceptable to Developer and Buyer. The Interconnection Agreement will provide that the Transmission Provider is to perform the required work under the Interconnection Agreement necessary for Buyer to complete and interconnect the Project.

(s) Quarterly Prevailing Wage and Apprenticeship Certificates. Buyer shall have received all Quarterly Prevailing Wage and Apprenticeship Certificates required to be delivered through the Closing Date.

3.7 Conditions Precedent to Developer's Obligation to Complete the Closing.

The obligation of Developer to effect the Closing and the transactions contemplated in this ARTICLE 3 is subject to the satisfaction or waiver by Developer on or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties made by Buyer in this Agreement that are qualified with respect to materiality shall be true and accurate in all respects and the representations and warranties made by Buyer in this Agreement that are not so qualified shall be true and accurate in all material respects; provided, that the Fundamental Representations made by Buyer shall be true and accurate in all respects, in each case 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).

(b) Performance. Buyer shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Deliveries. The amounts contemplated under Section 3.4(d) have been paid and Buyer shall have executed and Made Available or caused to be executed and Made Available to Developer the items set forth in Section 3.2(b).

(d) Absence of Orders; Law. No preliminary or permanent injunction or other Judgment of any Governmental Authority to prevent the consummation of the transactions contemplated by this Agreement, including the Closing, shall be in effect or pending, and no applicable Law shall have been enacted by any Governmental Authority that makes consummation of such transactions illegal.

(e) Transaction Documents. All of the Transaction Documents to which Buyer is a party (together with all amendments, supplements, schedules, and exhibits thereto) shall have been executed and delivered by Buyer, and each shall be in form and substance substantially similar to the form attached hereto or otherwise satisfactory to Developer in its reasonable discretion.

(f) Buyer Consents. All of the Buyer Consents shall have been duly obtained, made or given, shall be in full force and effect, and shall be in form and substance satisfactory to Developer in its reasonable discretion.

(g) Material Adverse Change. No Buyer Material Adverse Change shall have occurred since the Firm Date and be continuing.

(h) Interconnection Agreement. The Interconnection Agreement shall have been executed between [BPA]²¹ and the Project Company to provide for the provision of interconnection service to the Project Company, in a form reasonably acceptable to Developer and Buyer.

ARTICLE 4 EARLY TERMINATION

4.1 Early Termination.

(a) This Agreement may be terminated at any time prior to the Closing Date as follows, without either Party having any liability to the other with respect to such termination:

(i) by the mutual written agreement of the Parties;

(ii) by either Party, if any Law shall become effective after the Execution 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 Closing or the transactions contemplated in connection therewith;

(iii) by either Party, if the Firm Date has not occurred by [_____] (the "Firm Date Deadline"); provided, however, that the right to terminate this Agreement pursuant hereto shall not be available to any Party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Firm Date to have occurred on or before the Firm Date Deadline;

(iv) by Developer, if any Changes in Law increase the Construction Costs by a dollar amount in excess of \$[_____] in the aggregate ("Change in Law Cap"); provided, however, Buyer may avoid termination by assuming such costs in excess of the Change in Law Cap; and provided, further that, if Buyer has elected to assume such excess costs, Buyer shall have the right to terminate this Agreement in the event such assumed costs exceed \$[_____] in the aggregate; or

(v) by Buyer, pursuant to Section 9.4(b).

(b) This Agreement may be terminated by Developer at any time prior to the Closing Date as follows; in which case, the Developer will be entitled to pursue all rights or remedies available at law or in equity for the payment of damages arising from the non-terminating Party's breach or fraud prior to the date of such termination:

(i) if the Buyer breaches any representation, warranty, or covenant in this Agreement, and (i) such breach would result in a failure of, or inability of the Buyer to satisfy the applicable closing conditions, and (ii) such breach has not been cured to Developer's reasonable satisfaction within thirty (30) days following receipt of written notice of such breach; provided that the Buyer shall be permitted additional time to cure any such breach so long as Buyer commences such cure efforts within thirty (30) days after notice from the Developer and thereafter diligently and in good faith continues reasonable efforts to cure such breach; provided, however, that in no event shall such additional period of time to effect a cure exceed sixty (60) days;

²¹ Note to Draft: To be confirmed.

(ii) upon the Bankruptcy of the Buyer; or

(iii) if the Buyer's breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Outside Closing Date;

(c) This Agreement may be terminated by Buyer at any time prior to the Closing Date as follows; in which case the Buyer will be entitled to a termination payment in an amount equal to the amount of the required Pre-Closing Credit Support and Buyer will draw from the full amount of the Credit Support in furtherance of the satisfaction thereof:

(i) if the Developer breaches any representation, warranty, or covenant in this Agreement, and (i) such breach would result in a failure of, or inability of the Developer to satisfy the applicable closing conditions, and (ii) such breach has not been cured to Buyer's reasonable satisfaction within thirty (30) days following receipt of written notice of such breach; provided that the Developer shall be permitted additional time to cure any such breach so long as Developer commences such cure efforts within thirty (30) days after notice from the Buyer and thereafter diligently and in good faith continues reasonable efforts to cure such breach; provided, however, that in no event shall such additional period of time to effect a cure exceed sixty (60) days;

(ii) upon the Bankruptcy of the Developer;

(iii) if the Developer's breach of this Agreement has been the cause of, or resulted in, the failure of the Firm Date to occur on or before the Firm Date Deadline;

(iv) If a Developer Credit Event shall occur and Developer has not provided replacement Credit Support within the time frame contemplated by Section 8.2;

(v) if the Developer's breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Outside Closing Date;

(vi) upon written notice to Developer, if an Update is delivered to Buyer that (after taking into account all prior Updates delivered) discloses a Disclosure Item that has had or would reasonably be expected to have a Material Adverse Change and Buyer delivers written notice of termination to Developer; or

(vii) if Developer is delayed in the execution of the Project for any reason other than event(s) of Force Majeure, Interconnection Delays, Changes in Law or Buyer-Caused Delays and, as a result of such delay, Substantial Completion is not expected to occur on or prior to the date that is [one hundred twenty] ([120]) days after the Outside Closing Date, as determined by the Independent Engineer.

(d) The provision of the Construction Management Services may be terminated by Buyer after the Closing Date if Developer fails to provide the Construction Management Services in accordance with Section 12.1 and such failure has not been cured to Buyer's reasonable satisfaction within thirty (30) days following receipt of written notice of such failure; provided, that, if Buyer terminates the Construction Management Services under this Section 4.1(c), from and after the date of such termination, Developer shall have no further obligations under Sections 3.4(e), 10.1(a)(iii), 10.1(c), 10.3, 10.5, 11.5, 11.6, 11.7, and 12.8, and ARTICLE 12, ARTICLE 13 and ARTICLE 20 and the Buyer will be entitled to pursue all rights or remedies available at law or in equity for the payment of

damages arising from the Developer's failure to provide the Construction Management Services in accordance with Section 12.1.

(e) A Party desiring to terminate this Agreement pursuant to Section 4.1(a) or 4.1(b) shall give written notice thereof to the other Party. If this Agreement is validly terminated, then, subject to Section 25.17 (Survival), Section 4.1(a)(v), and the proviso set forth in Section 4.1(b), all further obligations of the Parties under this Agreement shall thereupon terminate and be of no further force or effect.

(f) If either Party terminates this Agreement in accordance with this Section 4.1 (other than a termination by Developer pursuant to Section 4.1(b)(i)), then for a period of one (1) year from the date upon which such termination occurs (such period, the "Exclusivity Period"), neither Developer, nor its successors and assigns, nor their respective Affiliates will enter into an obligation or agreement to sell or otherwise transfer the Project Company or the Project, or any products produced by the Project, to any third party (excluding to any Lender, solely for purposes of collateral assignment), unless: Developer first offers, in writing, to sell to Buyer the Project or the Project Company, or any products produced by the Project and the Parties have negotiated in good faith for not less than ninety (90) days and notwithstanding such negotiations the Parties fail to reach such agreement then Developer shall be permitted for the next ninety (90) days to enter into an agreement on substantially similar or more favorable to Developer terms than the last offer made by Developer to Buyer pursuant to this Section 4.1(f). If Developer fails to enter into such an agreement, then the provisions of this Section 4.1(f) shall once again apply.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Developer hereby represents and warrants to Buyer that all of the statements contained in this ARTICLE 5 are true and correct as of the Execution Date, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties are true and correct as of such date).

5.1 Organization, Standing, and Power.

Developer is (i) duly formed, validly existing and in good standing under the Laws of the State of Delaware, (ii) is qualified to do business in, and is in good standing in all jurisdictions in which its properties (or the character of its business) requires such qualification, except as would not have a material adverse effect on its ability to perform its obligations under this Agreement and (iii) has all requisite limited liability company power and authority to carry on its business as it is now being conducted.

5.2 Execution, Delivery and Enforceability.

Developer has full limited liability company power and authority to enter into, and to perform its obligations under, this Agreement. The execution, delivery and performance of this Agreement by Developer, and the consummation of the Transaction Documents, have been duly and validly authorized by all necessary limited liability company action required on its part, and no other limited liability company action on its part is necessary to authorize this Agreement or to consummate the Transaction Documents. This Agreement constitutes a valid and legally binding obligation of Developer, enforceable against it in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions.

5.3 Binding Agreement.

This Agreement and the Transaction Documents to which Developer is a party have been duly executed and delivered by Developer and, assuming due and valid authorization, execution and delivery thereof by Buyer and each other party thereto, this Agreement and the Transaction Documents to which it is a party are valid and binding obligations of Developer enforceable against Developer in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar applicable Laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity.

5.4 No Conflicts or Violations.

The execution and delivery by Developer of this Agreement and the Transaction Documents to which Developer is a party does not, and the performance by Developer of its obligations hereunder and thereunder and the completion of the transactions contemplated hereby and thereby, shall not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of Developer's or the Project Company's organizational documents;

(b) assuming all of the consents and approvals set forth on Schedule 3.4(b) (the "Developer Consents") have been obtained or given, result in a breach, default or violation (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any Contract associated with the Project to which Developer, Project Company, or any Affiliate of Developer (other than Project Company) is a party or Permit associated with the Project obtained by Developer, Project Company, or any Affiliate of Developer (other than Project Company) (with or without notice or lapse of time or both), except for such breaches, defaults, or violations (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained in writing (true and correct copies of which have previously been furnished to Buyer);

(c) materially violate or conflict with any Law applicable to Developer or any judgment, ruling, order, writ, decree, stipulation or injunction of any Governmental Authority applicable to Developer;

(d) give any Person the right to prevent, delay or otherwise interfere with the Transaction;

(e) assuming all of the Developer Consents have been obtained or given, conflict with or result in a violation or breach in any term or provision of any applicable Law applicable to Developer, Project Company, or the Project; or

(f) assuming all of the Developer Consents have been obtained or given, result in the imposition or creation of any Lien of any nature on the Membership Interests or Project, other than Permitted Encumbrances or Permitted Equity Exceptions.

5.5 No Proceedings, Litigation.

(a) Except as set forth on Schedule 5.5, there are no actions, suits, investigations, or proceedings by or before any Governmental Authority or arbitrator or, to Developer's Knowledge, threatened against or affecting Developer, which would reasonably be expected to materially and adversely impact the transactions contemplated herein.

(b) There is no action pending or, to the Developer's Knowledge, threatened against or relating to Developer that would reasonably be expected to (a) materially impair the ability of Developer to perform its obligations under this Agreement or consummate the Transaction Documents, (b) materially impair the ability of the Project Company or, to the Developer's Knowledge, any other party to a Project Contracts, to perform their respective obligations under any Project Contracts or (c) individually, or in the aggregate with any other action, adversely affect the Project Company or the Project in any material respect.

5.6 Compliance with Laws.

Developer is, and at all times has been, in each case, with respect to the Project, and to Developer's Knowledge, Contractor is, and at all times during performance of the Work has been in material compliance with all applicable Laws, including those relating to occupational health and safety, data privacy, and anti-corruption and anti-bribery, and the Project Company Permits with respect to the Project, including the design, engineering, supply, construction, installation, testing, commissioning, operation, and ownership of the Project.

5.7 Membership Interests.

(a) Developer owns, and is the sole beneficial and record owner of, and has full power and authority to convey, one hundred percent (100%) of the Membership Interests free and clear of all Encumbrances, other than Permitted Encumbrances contemplated by clause (b) of the definition thereof, and upon Closing, Developer will convey to Buyer good and valid title to the Membership Interests, free and clear of any Encumbrances.

(b) The Membership Interests have been duly authorized and validly issued, were not issued in violation of any Person's preemptive rights, and are fully paid and non-assessable (in each case to the extent such terms are applicable to limited liability companies under applicable Law). The Membership Interests constitute one hundred percent (100%) of the ownership interests in the Project Company.

(c) There is outstanding no subscription, option, warrant, purchase right, call or commitment of any kind or character relating to or entitling any Person (other than Buyer) to purchase or otherwise acquire the Membership Interests. There is no outstanding security, instrument or obligation that is or may be convertible into or exercisable or exchangeable for any Membership Interest or other ownership interest in the Project Company. Other than this Agreement, there are no contracts under which the Project Company may become obligated to sell or otherwise issue any Membership Interests in the Project Company.

5.8 Financial Resources.

Developer has the financial resources, assets, operating capital, credit, or other resources and means necessary to fulfill, on a timely basis, all of (a) Developer's obligations under this Agreement and the other Transaction Documents to which Developer is or will be a party and (b) Project Company's obligations under the EPC Contract and the Major Supply Agreements.

5.9 Reports.

(a) Developer has Made Available to Buyer a true, accurate, and complete copy of each Firm Date Report on or before the Firm Date.

(b) As of the Closing Date, Developer has Made Available to Buyer (a) all updates and supplements to the Firm Date Reports and (b) true, accurate, and complete copies of any additional Reports received by Developer with respect to the Project or the Project Company prior to the Closing Date.

(c) To Developer's Knowledge, there has been no material change in any findings or conclusions of any Report delivered or Made Available by Developer to Buyer other than for which Developer has Made Available and redelivered such Report to Buyer in final form as revised to address any such change.

5.10 Due Diligence.

Developer has Made Available for Buyer's review all material information in its possession or control or in the possession or control of its Affiliates relating to the Project Company and the Project requested by Buyer in connection with Buyer's due diligence examination conducted with respect to the transactions contemplated by this Agreement.

5.11 Affiliate Transactions.

Except as set forth on Schedule 5.11, (a) neither Developer nor any of its Affiliates nor any manager, officer, employee, director, member, or stockholder of Developer or any of its Affiliates is a party to any contract, agreement, instrument, or transaction with the Project Company; and (b) none of such Persons has any beneficial or contractual interest in or will derive any financial gain from any property or assets, real or personal, tangible or intangible, used in or pertaining to the Membership Interests or the Project, except for prior to the Closing, the normal rights of a stockholder or member.

5.12 Absence of Certain Business Practices.

Neither Developer nor Project Company, nor any of their respective directors, officers, employees or, to Developer's Knowledge, any agents or other Persons acting on their behalf have made, offered, accepted or received any unlawful contribution, payment, gift, kickback, expenditure, or other item of value to or from any customer, supplier, governmental employee, or any other person that would violate Corrupt Practices Laws, or would reasonably be expected to subject Project Company to any material damage or penalty in any civil, criminal, or governmental litigation or proceeding under Corrupt Practices Laws. Developer further represents and warrants that (a) no unrecorded fund or asset of Project Company has been established for any purpose, (b) no accumulation or use of corporate funds of Project Company has been made without being properly accounted for in the Books and Records of Project Company, and (c) no payment has been made by or on behalf of Project Company with the understanding that any part of such payment is to be used for any purpose other than that described in the documents supporting or requiring such payment.

5.13 Brokers.

All negotiations relating to this Agreement and the Transaction have been carried on by Developer in such a manner as not to give rise to any valid claim against Buyer or the Project Company for a brokerage commission, finder's fee or other like payment to any Person.

5.14 Bankruptcy; Solvency.

(a) Developer has not filed any voluntary petition in Bankruptcy or been adjudicated as bankrupt or Insolvent, filed any petition or answer seeking any reorganization, liquidation,

dissolution or similar relief under any federal bankruptcy act, insolvency, or other debtor relief law, nor sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its properties. Developer has not been subject to any involuntary bankruptcy action or other petition by a third party seeking reorganization, liquidation, dissolution or similar relief under any federal or state bankruptcy act, insolvency, or other debtor relief law nor, to the Developer's Knowledge, has any such action or other petition been threatened against the Developer.

(b) Developer is not now Insolvent and will not be rendered Insolvent by the sale of the Membership Interests under this Agreement.

5.15 Consents.

Except for the Developer Consents, Developer is not and will not be required to make any declaration or filing with, give any notice to, or to obtain any consent from, any Governmental Authority or other Person in connection with the execution and delivery of this Agreement or the consummation of the Transaction.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF DEVELOPER WITH RESPECT TO THE PROJECT COMPANY AND THE PROJECT

Developer hereby represents and warrants to Buyer that all of the statements contained in this ARTICLE 6 are true and correct as of the Execution Date, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties are true and correct as of such date).

6.1 Organization, Standing, and Power.

The Project Company (a) is duly formed, validly existing and in good standing under the Laws of [Delaware]²² (b) is qualified to do business in, and is in good standing in (i) the State of Washington and (ii) all other jurisdictions in which its properties (or the character of its business) requires such qualification, except, solely with respect to clause (ii), as would not have a Material Adverse Change and (c) has all requisite limited liability company power and authority to carry on its business as it is now being conducted and to own the Project Assets held by the Project Company.

6.2 No Violation.

Subject to Developer obtaining the Developer Consents, neither the execution and delivery by Developer of this Agreement, nor Developer's compliance with any provision hereof, nor Developer's consummation of the Transaction will:

(a) violate, or conflict with, or result in a breach of any provisions of the organizational documents of the Project Company;

(b) result in a default (or give rise to any right of termination, cancellation or acceleration) or give any Person the right to declare a default or exercise any remedy (with or without notice or lapse of time or both) under, or materially conflict with any of the terms, conditions or provisions of, or result in any payment or loss of benefit under any Project Contract, except for such

²² Note to Draft: To be confirmed by Developer.

defaults (or rights of termination or acceleration) as to which requisite waivers or consents have been obtained and furnished to Buyer;

(c) materially violate or conflict with any Law applicable to the Project Company or any judgment, ruling, order, writ, decree, stipulation or injunction of any Governmental Authority applicable to the Project Company; or

(d) give any Person the right to prevent, delay or otherwise interfere with the Transaction.

6.3 Litigation.

Except as set forth in Schedule 4.2(a), there is no action pending or, to the Developer's Knowledge, threatened against or relating to the Project Company that would reasonably be expected to (a) materially impair the ability of the Project Company to perform its obligations under this Agreement or consummate the Transaction, (b) materially impair the ability of the Project Company or, to the Developer's Knowledge, any other party to a Project Contract, to perform their respective obligations under any Project Contract or (c) individually, or in the aggregate with any other action, adversely affect the Project Company or the Project in any material respect.

6.4 Compliance with Laws.

(a) Project Company is, and at all times has been, in material compliance with all applicable Laws, including those relating to occupational health and safety, and the Project Company Permits with respect to the Project. Neither the Developer nor the Project Company has received any written notice or claim that the Developer or the Project Company has violated any applicable Law relating to the Project Company or the Project Assets.

(b) The Project is being, and at all times has been, developed, constructed, and permitted in material compliance with all applicable Laws, all Project Company Permits, and Prudent Industry Practices.

6.5 No Prior Business.

Since the date of its formation, the Project Company has not conducted any business or acquired any property or asset, except in each case in connection with the development of the Project. The Project Company does not own any interest in any other Person.

6.6 Employees.

The Project Company (a) has never had and does not have any employees, and (b) does not participate in, sponsor, maintain, or contribute to, or have any direct or indirect liability, whether contingent or otherwise, with respect to, any Benefit Plan or other arrangement providing for employee benefits subject to any provisions of ERISA. Neither the Project Company nor any of its ERISA Affiliates, has any liability with respect to a "multiemployer plan" within the meaning of Section 3(37) of ERISA, that would result in the imposition of any liability on Buyer or any of its Affiliates following the Closing (including the Project Company). "ERISA Affiliates" means any trade or business (whether or not incorporated) that is treated as a single employer with Developer within the meaning of Section 414(b), (c), (m) or (o) of the Code.

6.7 Subsidiaries and Joint Ventures.

The Project Company does not own, nor has it ever owned, any capital stock, security, membership, or partnership interest or other equity interest of any kind in any corporation, partnership, limited liability company, joint venture, association, or other entity.

6.8 Managers and Bank Accounts.

The Project Company does not have any managers, officers, or directors. The Project Company does not have any bank accounts.

6.9 Bankruptcy; Solvency.

The Project Company has not filed any voluntary petition in bankruptcy or been adjudicated as bankrupt or Insolvent, filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any federal bankruptcy act, insolvency, or other debtor relief law, nor sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its properties. The Project Company has not been subject to any involuntary bankruptcy action or other petition by a third party seeking reorganization, liquidation, dissolution or similar relief under any federal or state bankruptcy act, insolvency, or other debtor relief law, nor, to the Developer's Knowledge, has any such action or other petition been threatened against the Project Company.

6.10 No Undisclosed Liabilities.

Except as otherwise disclosed in Schedule 6.10, the Project Company does not have any Liabilities of any nature (whether secured or unsecured, accrued, absolute or contingent, unliquidated, or otherwise and whether due or to become due) including book entry between Affiliates or any other method or means except for Liabilities for future performance arising under the Project Company Contracts and Project Company Permits listed in the Schedule 6.10 (none of which is a Liability for breach of contract, breach of warranty or tort). Except as set forth in Schedule 6.10, all invoices or other demands for payment received prior to Closing by the Project Company or by Developer or its Affiliates with respect to any existing Project Company Contracts have been paid in full. Upon the Closing, the Project Company has no Indebtedness, except for Permitted Indebtedness.

6.11 Affiliate Transactions.

Other than as set forth on Schedule 4.17, there are no existing or pending transactions, contracts or liabilities between or among Developer or any Affiliate or representative of Developer (other than the Project Company), on the one hand, and Project Company on the other hand.

6.12 Project Assets.

The Project Company has good and valid title to or valid and enforceable leasehold or option interests in, or enforceable rights under, as applicable, all of the material Project Assets held by the Project Company, free and clear of Encumbrances, other than Permitted Encumbrances. As of the Closing Date, all Project Assets, contracts and other entitlements primarily relating to the Project and held by any Affiliate of the Project Company, other than those set forth in Schedule 6.12, have been transferred to and are solely in the name of the Project Company. To Developer's Knowledge, all material tangible Project Assets owned or leased by the Project Company are adequately maintained and in a manner materially consistent with any applicable warranties and are in good operating

condition and repair and free from any material defects, reasonable wear and tear excepted, and are suitable for the uses for which they are being used.

6.13 Intangible Personal Property.

Schedule 6.13 contains a true and complete list of all material Intangible Personal Property owned, licensed to, or otherwise held by, the Project Company. The Project Company has good and valid title or license to, as applicable, all of the material Intangible Personal Property described on Schedule 6.12 owned by or licensed to the Project Company. All such material Intangible Personal Property is free and clear of all Encumbrances, other than Permitted Encumbrances. Other than the Project Company, neither Developer nor any of its other Affiliates owns, licenses, or otherwise holds any Intangible Personal Property necessary for the development, construction, operation, maintenance, or performance of the Project.

6.14 Project Company Contracts.

Schedule 6.14 contains (a) true, correct, and complete list of all Project Company Contracts (other than any real property agreements, which are listed on Schedule 6.14(a)), (b) true, correct, and complete copies of all such Project Company Contracts have been Made Available to Buyer, and (c) neither the Project Company nor any Affiliate thereof that is a party to any such Project Company Contract is in default (and, to Developer's Knowledge, no other party thereto is in default) of any material obligation under any such Project Company Contract, and, to Developer's Knowledge, no conditions exist that, with the passage of time or the giving of notice, would be reasonably expected to constitute a default of any material obligation under any such Project Company Contract. Each Project Company Contract constitutes the legal, valid, binding, fully effective, and enforceable obligation of the Project Company and any Affiliate thereof that is a party to any such Project Company Contract and, to Developer's Knowledge, any other party thereto except as may be limited by applicable bankruptcy and similar laws affecting the enforcement of creditors' rights and general equitable principles. Neither the Project Company nor any Affiliate thereof has received any written notice from any counterparty to any Project Company Contract that such Person is considering the amendment, termination, revocation, or cancellation of any of such Project Company Contract.

6.15 Project Company Permits; Project Company Regulatory Approvals.

(a) Schedule 6.15(a) sets forth all Permits that are held by Developer or the Project Company in connection with the development, construction, and commissioning of the Project (the "Project Company Permits"). True and complete copies of all Project Company Permits have been made available to Buyer. All Project Company Permits listed on Schedule 6.14(a) applicable to the Project have been obtained in the name or on behalf of the Project Company, and are in full force and effect. To the Developer's Knowledge, no event has occurred and is continuing that reasonably would be anticipated to permit, or after notice or lapse of time or both reasonably would be anticipated to permit, any materially adverse modification, revocation, or termination of, or any other material change in, any Project Company Permit. Developer has not received written notice of any action, suit, investigation or proceeding with respect to the Project Company or the Project Assets that would reasonably be anticipated to result in any material adverse modification, or the rescission, termination, or suspension of any Project Company Permit.

(b) Schedule 6.15(b) sets forth all Permits that Developer or the Project Company have applied or filed for in relation to the Project as of the Execution Date that are not yet obtained (the "Requested Permits"). To Developer's Knowledge, there are no facts or circumstances currently in existence that would result in any Requested Permit not being granted in a timely manner or, if

granted, containing conditions which, individually or in the aggregate, would reasonably be expected to adversely affect the Project in any material respect. Developer has provided or caused to be provided to Buyer true, correct and complete copies of all material written correspondence in their possession or control to or from any Governmental Authority in connection with the Requested Permits. There are no written claims or objections or actions or proceedings pending and, to Developer's Knowledge, no claims or objections or proceedings have been threatened in writing, relating to any application for a Requested Permit.

(c) To Developer's Knowledge, Schedule 6.15(c) sets forth all of the Discretionary Permits that are reasonably expected to be required in connection with the use, development, construction or operation of the Project (the "Required Permits").

(d) To Developer's Knowledge, there are no facts or circumstances currently in existence that would result in the Required Permits being obtained on terms and conditions, including with respect to the timing of receipt thereof, which, individually or in the aggregate, would reasonably be expected to adversely affect the Project in any material respect.

(e) Neither the execution nor delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will result in the termination of any Project Company Permit or materially and adversely affect any application for a Requested Permit or other Required Permit.

6.16 Real Estate.

(a) Schedule 6.16(a) contains a complete and accurate list of each option, lease, sublease, deed, right-of-way, easement, surface use agreement, consent, license or other instrument covering the Real Property and either entered into, assigned to, or assumed by the Project Company (such documents, the "Real Property Documents"). As of the Closing Date, each Real Property Document is in full force and effect in all material respects, and constitutes a legal, valid and binding agreement, enforceable in accordance with its terms in all material respects, of the Project Company and, to the Developer's Knowledge, of each other party thereto, except as the same may be limited by the Enforceability Exceptions. Neither the Project Company nor, to the Developer's Knowledge, any other party to each such Real Property Document is in material violation or material breach of or default under such contract or instrument (or with notice or lapse of time or both, would be in material violation or material breach of or default under any such contract or instrument). As of the Closing Date, the Real Property held by the Project Company shall be sufficient for the development of the Project as contemplated by the Site Plans.

(b) There is no pending or, to the Developer's Knowledge, threatened condemnation (or similar proceedings) of all or any part of the Project (nor has Developer or the Project Company received any written notice threatening condemnation), and neither Developer nor the Project Company has assigned or sublet or granted any rights to use and occupy or created any limitations to or on its interests in the Project to any Person except as expressly set forth in the Real Property Documents.

(c) To Developer's Knowledge, there is no oil and gas, mining, mineral or water extraction, or development project contemplated, in progress or planned to commence on the Project Site, or any other site on which the Project is located, that would reasonably be expected to materially interfere with the development, construction, operation, maintenance, or performance of the Project as contemplated by the Site Plans.

6.17 Environmental Matters.

(a) Schedule 6.17(a) sets forth all environmental reports, assessments, and audits, including reports, assessments, and audits relating to wetlands, air quality, and air pollutant emissions or discharges, and studies relating to threatened or endangered species and avian species, including those species protected by Environmental Law, and studies relating to archaeological, cultural, and historical resources prepared by or on behalf of Project Company in connection with the Project or otherwise in Developer's possession or control with respect to the Project. Developer has Made Available and provided Buyer with copies of the materials set forth in Schedule 6.16(a).

(b) The Project Company is and has been in compliance with all applicable Environmental Laws with respect to it and the Project in all material respects. To Developer's Knowledge, there are no facts or circumstances, nor has the Project Company taken any action or omission, which could reasonably be expected to give rise to a liability under any Environmental Laws. The Project Company is not (i) subject to any outstanding order under any Environmental Laws, (ii) in receipt of or threatened in writing with, any written request for information, notice, threat, allegation, complaint, or claim with respect to any violation of or non-compliance with any Environmental Law from any Person or Governmental Authority, or (iii) a party to or threatened in writing with, any governmental or citizen enforcement action under any Environmental Law; in each case with respect to the Project.

(c) Hazardous Substances have not been released by the Project Company or any Affiliate of the Project Company from or to the Site under circumstances that would result in any liability or obligation under any Environmental Law to investigate or clean-up any such Hazardous Substances or to notify any Governmental Authority or Person about the Release.

(d) The Project Company has not engaged in the unpermitted taking of any species listed as endangered or threatened or otherwise protected under any Environmental Law applicable to the Project Company or the Project, or of the habitat of any such species, in any way related to the development, construction or operation of the Project.

(e) Developer has made available to Buyer true, correct and complete copies of all material reports, site assessments, audits and studies in the possession or control of Developer describing the environmental conditions at the Site, including with respect to the presence or potential presence of Hazardous Substances, protected species or protected resources.

6.18 Tax Benefits; Tax Matters

(a) The Project Company is the owner of the Project Assets and the Project. Neither the Project nor any property that is part of the Project has been placed in service for federal income tax purposes (including Sections 45, 45Y, 48, 48E and 168 of the Code). Neither the Project nor any property that is part of the Project has been energized or synchronized to the electric transmission system. Critical preoperational testing with respect to the Project has not been completed. Daily operations with respect to the Project have not commenced. No revenue has been generated from the sale of electricity output with respect to the Project.

(b) There has been no "original use" (within the meaning of Section 168(k) of the Code) of the Project or any property that is part of the Project. No property that is a part of the Project has been used by any Person other than in the development, construction, or startup of the Project.

(c) Neither the Developer nor any Affiliate of the Developer has (i) claimed or intends to claim any depreciation deductions, amortization deductions, tax credits (including the ITC or PTC), or other credits, deductions or allowances, or (ii) has made or intends to make any election under Section 6417 or Section 6418 of the Code, in each case with respect to the Project or any property that is part of the Project or the assets associated with the Project.

(d) No portion of the basis of the property in the Project is attributable to “qualified rehabilitation expenditures” within the meaning of Section 47(c)(2)(A) of the Code.

(e) No portion of any property that is part of the Project or the assets associated with the Project has benefited from the proceeds of any grant or rebate program that would cause a reduction in the amount of the ITC or PTC with respect to the Project or the assets associated with the Project, and no application with respect to any such grant or rebate has been filed or submitted.

(f) No property that is part of the Project or the assets associated with the Project is or has been (i) “tax-exempt bond financed property” or “tax-exempt use property” within the meaning of Section 168 of the Code, (ii) imported property of the kind described in Section 168(g)(6) of the Code, or (iii) property used by a Person described in Section 50(b)(3) of the Code.

(g) The Project is located in its entirety in the United States.

(h) Neither the Developer nor the Project Company has any legal obligation, absolute or contingent, to any Person other than the Buyer to transfer or effect a transfer of all or any portion of the Project, including any electric power or Tax Benefits attributable to, resulting from or arising in connection with the Project.

(i) The certifications set forth in all Quarterly Prevailing Wage and Apprenticeship Certificates are true, correct and complete in all respects, and each certification contained in any certificate that may be provided by Contractor or any Subcontractor to Developer and maintained by Developer pursuant to Section 10.2(c) is true, corrected and complete in all respects.

(j) All Tax Returns that are required to have been filed by or with respect to the Project Company have been filed and all such Tax Returns are true, correct and complete in all material respects.

(k) All Taxes required to have been paid by or with respect to the Project Company, or for which the Project Company may otherwise be liable, have been timely paid.

(l) The Project Company has withheld or collected and paid over to the appropriate Governmental Authorities all Taxes required by applicable Law to be withheld or collected and the Project Company has properly received and maintained any and all certificates, forms and other documents required by applicable Law for any exemption from withholding and remitting any Taxes.

(m) No Tax audits or administrative or judicial proceedings are being conducted, pending or, to Developer’s Knowledge, threatened with respect to the Project Company, the Project, or the Project Assets or with respect to any Taxes of or with respect to the Project Company.

(n) No claim or deficiency against or with respect to the Project Company for the assessment or collection of any Taxes has been asserted or proposed against or with respect to the Project Company or which relates to Taxes or with respect to the Project Company, which claim or

deficiency has not been settled with all amounts determined to have been due and payable having been timely paid in full.

(o) There are no liens (other than Permitted Encumbrances) on any of the assets of the Project Company.

(p) For U.S. federal income Tax purposes (and, where applicable, state and local Tax purposes), the Project Company has at all times since its formation been properly classified as an entity disregarded as separate from its owner, and no election has been or will be filed or made to change such treatment and classification for U.S. federal income tax purposes (or where applicable state or local Tax purposes).

(q) The Project Company (i) has no liability for the Taxes of any other Person (A) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law) or (B) as a transferee or successor, and (ii) is not a party to, bound by or has any obligation or potential liability under any Tax allocation, sharing or indemnity agreement or arrangement, or under any other similar agreement or arrangement relating to Taxes.

(r) The Project Company has not at any time been a partner in a partnership or joint venture, a party to a Tax partnership agreement or other contract, agreement or arrangement that is treated, or required to be treated, as an arrangement requiring a partnership income Tax Return to be filed under Subchapter K of Chapter 1 of Subtitle A of the Code, or an owner of an interest in an entity treated as a partnership for Tax purposes.

(s) The Project Company has not at any time been a party to, or has any liability for the payment of any Tax resulting from a Person's participation, in any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4 (or any similar or corresponding provision of state or local Law).

(t) No written claim has been received by Developer or any of its Affiliates (including the Project Company) from a Governmental Authority in a jurisdiction where Tax Returns of a particular type are not filed by or with respect to the Project Company, the Project Assets, or the Project that the Project Company, the Project Assets, or the Project is or may be subject to such type of taxation by that jurisdiction.

(u) Developer (or if Developer is an entity disregarded as separate from its owner for federal income tax purposes, such regarded owner) is not a "foreign person" within the meaning of Section 1445 of the Code.

(v) The Project Company has not (i) entered into any agreement or waiver extending any statute of limitations with respect to Taxes that remains in effect, (ii) agreed to any extension of time with respect to a Tax assessment or deficiency that remains in effect, (iii) entered into any closing agreement, settlement agreement or other agreement with any Governmental Authority with respect to Taxes that will remain in effect after the Closing Date or (iv) requested or is the subject of or expressly bound by any private letter ruling, technical advice memorandum or similar ruling or memorandum with any Governmental Authority that remains in effect with respect to any Taxes, nor is any such request outstanding. No power of attorney granted by Developer with respect to the Project Company, the Project Assets, or the Project is currently in effect.

6.19 Sufficiency of Project Assets

As of the Closing Date, the Project Assets constitute all of the material Project Contracts, Permits, rights, assets and properties necessary to own, use, operate and maintain the Project on the Project Site in accordance in all material respects with applicable Law and Prudent Industry Practices, except for punch list items under the EPC Contract.

6.20 Consents.

Except for the Project Company Required Consents, the Project Company is not and will not be required to make any declaration or filing with, give any notice to, or to obtain any consent from, any Governmental Authority or other Person in connection with the execution and delivery of this Agreement or the consummation of the Transaction.

6.21 FERC and State Energy Regulation.

Neither the Developer nor the Project Company is subject to regulation under the FPA or PUHCA. The Project Company (a) has taken no action that would require any of the Parties hereto to obtain FERC authorization under Section 203 of the FPA to consummate the Transaction and (b) is not subject to regulation by the FERC or any state public service commission as a “public utility,” “electric utility,” “electric company,” “electrical corporation,” “holding company,” or similar term under any applicable federal or state Law relating to public utilities.

6.22 OFAC: UFLPA.

Developer represents and warrants that it is in compliance with the requirements of Executive Order No. 13224, 66 Fed Reg. 49079 (September 25, 2001) and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury and in any enabling legislation or other executive orders in respect thereof. Developer and the Project Company have complied in all material respects with the Uyghur Force Labor Prevention Act (Pub. L. 117-78 (2021)) and have caused any subcontractors or Developers of Developer and/or the Project Company to comply with the same. Neither Developer, the Project Company, nor any officer, director, manager, employee, accountant, counsel, consultant, advisor, trustee, agent or other representative of Developer or the Project Company in its capacity as such, has materially violated the Foreign Corrupt Practices Act of 1977, as amended, or the anticorruption laws of any jurisdiction where Developer or the Project Company does business.

6.23 Insurance.

Schedule 6.23 contains (a) a list of all current insurance policies that insure the Project Company, the Project Assets and the Project until the date of the Closing, and (b) a true, complete, and correct list of all Claims made under such insurance policies since the formation of the Project Company. All such insurance policies are in full force and effect, neither Developer nor the Project Company has defaulted in any material respect (or is in material breach of such insurance policies, including any such breach or default with respect to the payment of premiums or the giving of notice of Claims), with respect to its obligations under any such insurance policies or have been denied insurance coverage thereunder, and no written notice of cancellation or termination has been received by Developer or the Project Company respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation.

6.24 Books and Records.

True and correct copies of the Project Company's Books and Records have been Made Available to Buyer, including such Books and Records that may be maintained by Developer.

6.25 Intellectual Property.

Except as set forth in Schedule 6.25, Project Company does not own any copyright, intellectual property right, patent, patent application, domain name, trade secret, trademark, trademark application, service mark, service mark application, assumed name, or trade name. Neither Project Company nor, with respect to the Project, Developer have interfered with, infringed upon, misappropriated, or violated any intellectual property rights of third parties in any respect, and neither Project Company nor, with respect to the Project, Developer have received any charge or complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation.

6.26 No Data Breaches.

To Developer's Knowledge, there has been no security breach, cyberattack, other data security or cyber incident or unauthorized access to any Developer IT Asset, which resulted in the unauthorized use, misappropriation, modification, encryption, corruption, disclosure, or transfer of any material information or data contained therein relating to the Project Company or the Project Assets that would reasonably be expected to result in a Material Adverse Change.

6.27 No Other Representations.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, NEITHER DEVELOPER, THE PROJECT COMPANY, NOR ANY AFFILIATE OR REPRESENTATIVE OF DEVELOPER MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE MEMBERSHIP INTERESTS, THE PROJECT COMPANY, THE PROJECT, THE PROJECT ASSETS, OR THE BUSINESS, ASSETS, OPERATIONS, CONDITION (FINANCIAL OR OTHERWISE) OR PROSPECTS OF THE PROJECT COMPANY, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Developer that the statements contained in this ARTICLE 7 are true and correct as of the Execution Date, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties are true and correct as of such date).

7.1 Organization and Existence.

Buyer is a corporation duly organized, validly existing and in good standing under the Laws of [Washington] and has all requisite power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is qualified to do business in any other jurisdiction where the consummation of the Transaction requires such qualification, except where failure to qualify would not prevent Buyer from performing its obligations hereunder in any material respect.

7.2 Execution, Delivery and Enforceability.

Buyer has full power and authority to enter into, and to carry out its obligations under, this Agreement and to consummate the Transaction. The execution, delivery and performance of this Agreement and the consummation of the Transaction, have been duly and validly authorized by all necessary action required on the part of Buyer and no other actions on the part of Buyer are necessary to authorize this Agreement or to consummate the Transaction. This Agreement constitutes the valid and legally binding obligations of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions.

7.3 Binding Agreement.

This Agreement and the Transaction Documents to which Buyer is a party have been duly executed and delivered by Buyer and, assuming due and valid authorization, execution and delivery thereof by Developer and each other party thereto, this Agreement and the Transaction Documents to which it is a party are valid and binding obligations of Buyer enforceable against Buyer in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar applicable Laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity.

7.4 No Conflicts.

Subject to Buyer obtaining all consents and approvals set forth on Schedule 7.4 (the "Buyer Consents"), neither the execution and delivery by Buyer of this Agreement, nor Buyer's compliance with any provision hereof or thereof, nor Buyer's consummation of the Transaction will:

(a) violate, or conflict with, or result in a breach of any provisions of the organizational documents of Buyer;

result in a default (or give rise to any right of termination, cancellation or acceleration) or give any Person the right to declare a default or exercise any remedy (with or without notice or lapse of time or both) under, or materially conflict with any of the terms, conditions or provisions of, or result in any payment or loss of benefit under, any note, bond, mortgage, indenture, license, contract, or agreement or other instrument or obligation to which Buyer is a party or by which it may be bound;

(b) materially violate or conflict with any Law applicable to Buyer or any judgment, ruling, order, writ, decree, stipulation or injunction of any Governmental Authority applicable to Buyer; or

(c) give any Person the right to prevent, delay or otherwise interfere with the Transaction.

7.5 No Proceedings.

Except as set forth on Schedule 7.5, there is no action pending or, to Buyer's Knowledge, threatened against or relating to Buyer or its Affiliates that either has resulted or would result, if successfully asserted, materially impair Buyer's ability to perform its obligations hereunder or to consummate the Transaction or that would which would reasonably be expected to result in a Buyer Material Adverse Change.

7.6 Buyer Permits; Buyer Regulatory Approvals.

(a) Schedule 7.6(a) sets forth all Permits required with respect to the design, engineering, development, construction, startup, testing, commissioning, and completion of the Project that are the responsibility of Buyer to obtain (the “Buyer Permits”).

(b) No consent or approval of, filing with, or notice to, any Governmental Authority by Buyer is required in connection with the execution, delivery, and performance by Buyer of this Agreement or any of the Transaction Documents to which it is a party or the completion of the transactions contemplated hereby or thereby.

7.7 Brokers.

All negotiations relating to this Agreement and the Transaction on behalf of Buyer have been carried on by Buyer in such a manner as not to give rise to any valid claim against Developer for a brokerage commission, finder's fee or other like payment to any Person.

7.8 Solvency.

No petition or notice has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up, or dissolution of Buyer. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Buyer's assets or the income of Buyer. Buyer does not have any plan or intention of, or has received any notice that any other Person has any plan or intention of, filing, making, or obtaining any such petition, notice, order, or resolution or of seeking the appointment of a receiver, trustee, custodian, or similar fiduciary.

7.9 Consents.

Except for the Buyer Consents, Buyer is not and will not be required to make any declaration or filing with, give any notice to, or to obtain any consent from, any Governmental Authority or other Person in connection with the execution and delivery of this Agreement or the consummation of the Transaction.

7.10 Independent Investigation.

Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and any other agreements contemplated hereby to which it is a party and to consummate the Transaction and any other transactions contemplated hereby or thereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Developer set forth in ARTICLE 5 and ARTICLE 6 of this Agreement and the Transaction Documents (including the related portions of the Developer Disclosure Schedule); and (b) neither Developer nor any other Person has made any representation or warranty as to Developer, the Project, the Project Company or this Agreement, except as expressly set forth in ARTICLE 5 and ARTICLE 6 of this Agreement. Buyer agrees that it shall not sell, hypothecate or otherwise transfer the Membership Interests without registering or qualifying them under the Securities Act, any applicable state securities law or any other applicable Law unless the transfer is exempted from registration or qualification thereunder. Buyer is purchasing the Membership Interests for its own account and not for the account of any other Person and not with a view to distribution or resale to others.

7.11 Compliance with the Foreign Corrupt Practices Act.

Neither Buyer nor any officer, director, manager, employee, accountant, counsel, consultant, advisor, trustee, agent or other representative of Buyer in its capacity as such, has materially violated the Foreign Corrupt Practices Act of 1977, as amended, or the anticorruption laws of any jurisdiction where Buyer does business. Buyer is not an “investment company” or a company “controlled” by an investment company within the meaning of the Investment Company Act of 1940.

7.12 Sufficiency of Funds.

Upon satisfaction of the conditions precedent set forth in Section 3.6, Buyer will have sufficient cash on hand or other sources of, or access to, immediately available funds to enable it to pay the Purchase Price in accordance with Section 3.3 and Section 3.4 and any Buyer Construction Costs.

7.13 Securities Law Matters.

Buyer hereby acknowledges that the Membership Interests have not been registered under the Securities Act, or registered or qualified for sale under any state securities laws, and cannot be resold without registration thereunder or exemption therefrom, to the extent such Laws are applicable. Buyer is an “accredited investor,” as such term is defined in Regulation D of the Securities Act, and will acquire the Membership Interests for its own account and not with a view to a sale or distribution thereof in violation of the Securities Act, and the rules and regulations thereunder, any applicable state “blue sky” laws or any other applicable securities laws. Buyer has (alone or together with its advisors) sufficient knowledge and experience in financial and business matters to enable it to evaluate the risks of investment in the Membership Interests and has the ability to bear the economic risk of this investment. Buyer recognizes that investment in the Membership Interests involves substantial risks. It acknowledges that any financial projections that may have been provided to it are based on assumptions of operating results and, therefore, represent an estimate of future results based on assumptions about certain events (many of which are beyond the control of Developer or the Project Company). It understands that no assurances or representations can be given that the actual results of the operations of the Project Company or the Project will conform to the projected results for any period.

ARTICLE 8 CREDIT SUPPORT

8.1 Credit Support.

(a) Developer shall furnish to Buyer, within five (5) Business Days following the Execution Date, Credit Support in the amount of [_____] Dollars (\$[_____] per MW_{AC} of the Planned Nameplate Capacity (the “Pre-Guaranteed Mechanical Completion Date Credit Support”). Prior to the Mechanical Completion Date, Developer’s Credit Support shall not be subject to replenishment. Upon satisfaction of the credit support requirements for the period commencing with Mechanical Completion in accordance with Section 8.1(b), Buyer will return the Pre-Guaranteed Mechanical Completion Date Credit Support to Developer.

(b) In advance of (and as a condition to achieving) Closing Date, Developer shall furnish and thereafter maintain Credit Support to Buyer in the aggregate amount of \$[_____] ²³ (the “Post-Construction Period Credit Support”) in respect of Buyers indemnification obligations under Section 19.1.

(c) Developer hereby waives any and all rights it may have to require Buyer to provide financial assurances or security (including cash, letters of credit, bonds or other collateral) in respect of its obligations under this Agreement.

8.2 Utilization of Credit Support.

Buyer shall be entitled to draw upon and/or be paid from any Credit Support provided by Developer for any obligation of Developer arising under this Agreement that is not paid when due (subject to any applicable cure periods). Following the Closing Date, or any termination of this Agreement, and provided that all obligations of Developer under this Agreement or arising out of any expiration or earlier termination thereof have been satisfied in full, including with respect to all outstanding claims of Buyer, the Credit Support provided pursuant to Section 8.1 shall be released to Seller within eighteen (18) months after such termination or expiration of this Agreement; provided, that that if at such time there exist any pending claims against Developer, Developer’s Credit Support shall not be released until such claims have been finally resolved.

8.3 Developer Credit Event.

Upon the occurrence of a Developer Credit Event, Developer shall have ten (10) Business Days following the earlier to occur of (i) Developer’s knowledge of the occurrence of such Developer Credit Event and (ii) Developer’s receipt of notice from Buyer of such Developer Credit Event, to remedy the situation by providing replacement Credit Support meeting the requirements of Section 8.1. In the event that Developer fails to provide such additional Credit Support within such ten (10) Business Days, then an Buyer shall be entitled to the remedies set forth in Section 4.1(c)(iv), without the application of any cure periods.

8.4 Letter of Credit.

Any letter of credit provided pursuant to this Agreement shall be issued by a Creditworthy Entity in a form reasonably acceptable to Buyer (it being agreed that the form of letter of credit attached as [EXHIBIT D] hereto is acceptable to Buyer) and must provide, among other things, that the beneficiary of such letter of credit is entitled to draw the full amount of such letter of credit if: (i) the letter of credit has not been renewed or replaced within thirty (30) days prior to the expiration date of the letter of credit; or (ii) the issuer of the letter of credit is no longer a Creditworthy Entity and Developer has failed, within ten (10) Business Days after receipt of written notice thereof by Buyer to replace such letter of credit with another letter of credit issued by a Creditworthy Entity, in a form acceptable to Buyer, or other replacement Credit Support meeting the requirements of Section 8.1. Costs of a letter of credit shall be borne by Developer.

8.5 Reporting Requirements.

If (a) Developer is satisfying the Credit Support obligations of Section 8.1 by maintaining an Investment Grade Credit Rating, or (b) a guaranty has been provided to satisfy the Credit Support

²³ Note to Draft: Figure to be confirmed.

obligations of Section 8.1, then, in each case, Developer shall furnish to Buyer audited financial statements of Developer or such guarantor, as applicable, no later than one hundred twenty (120) days after the end of each fiscal year during the Term of the EPC Contract.

ARTICLE 9 COVENANTS OF THE PARTIES

9.1 General Covenants of the Parties.

(a) Each Party shall (a) as promptly as is reasonably practicable, diligently and in good faith use commercially reasonable efforts to cause each Firm Date condition and Closing condition in this Agreement to be satisfied as soon as reasonably possible, and (b) coordinate and cooperate with the other Party in providing such information and supplying such assistance as may be reasonably requested by such other Party up to the Final Acceptance of the Project. Without limiting the generality of the foregoing or any other provision of this Agreement regarding approvals, the Developer and Buyer shall each individually use commercially reasonable efforts to obtain all authorizations, consents, orders, and approvals of, and to give all notices to and make all filings with, all Governmental Authorities (including those pertaining to the Permits and regulatory approvals) and third parties up to Final Acceptance of the Project that may be or become necessary for the performance of its obligations under this Agreement and shall cooperate fully with the other Party in promptly seeking to obtain all such authorizations, consents, orders, and approvals, giving such notices, and making such filings; provided, however, that Developer shall be primarily responsible for seeking and obtaining such approvals, consents, and orders and preparing and submitting such notices and filings.

(b) Each Party shall use commercially reasonable efforts to do and perform or cause to be done and performed all further acts and things and shall execute and deliver all further agreements, certificates, instruments, and documents as any other Party may reasonably request in order to effect the agreements set forth in the Transaction Documents and the consummation of the transactions contemplated herein. Developer shall promptly provide Buyer with all materials and documentation reasonably requested by Buyer for its due diligence review of the Membership Interests and the Project. Developer shall promptly and diligently cooperate with Buyer in such due diligence process, including responding within a commercially reasonable period to all reasonable inquiries.

9.2 Conduct of Business Pending Closing.

(a) Prior to the Closing Date, Developer shall cause the Project Company to conduct its business in the ordinary course of business, consistent with past practice; provided, that Developer shall not, and shall cause the Project Company and its Affiliates not to take any of the following actions without the prior written consent of Buyer:

(i) except as required by this Agreement, modify in any material respect, amend, or terminate any Project Company Contract (including, but not limited to the EPC Contract) or Real Property Document; provided, however, that Buyer consent shall not be required with respect to EPC Change Orders issued by Contractor pursuant to the terms of the EPC Contract to the extent that such EPC Change Order does not adversely impact the Project Schedule, include Buyer Construction Costs, materially modify the scope of work under the EPC Contract or result in an increase to the Purchase Price;

(ii) enter into the EPC Contract in a form that does not conform (in all material respects) to the requirements of this Agreement, including the material terms of such agreement attached hereto as [EXHIBIT E] and [EXHIBIT F];

(iii) other than the EPC Contract, enter into any material Project Company Contract or Real Property Document;

(iv) send any notices under any Project Company Contract declaring an event of force majeure or the default of any counterparty to a Project Company Contract, or any notice that could reasonably be expected to have a Material Adverse Change, without first notifying Buyer;

(v) initiate or threaten to initiate any litigation or adversarial proceeding involving the Project Company, the Project Site, the Project Assets, or the Project;

(vi) release, waive, settle, or compromise any dispute or pay damages under any settlement or compromise of any proceeding relating to the Project, the Project Company, the Project Site or the applicable Project Assets;

(vii) sell, lease, license, assign, or transfer any Project Assets to any Person (including transfers to Developer or any of its Affiliates);

(viii) make any material change in the book or accounting methods used by or applicable to the Project Company or Project, except as required by GAAP;

(ix) merge or consolidate the Project Company with any other Person or adopt any plan of dissolution or liquidation with respect to the Project Company, or make any voluntary bankruptcy or insolvency filing (or consent to any such involuntary filing) or reorganization with respect to the Project Company;

(x) cause the Project Company to incur or assume Indebtedness, other than the Permitted Indebtedness;

(xi) admit any new member, manager, or holder of membership interests in the Project Company;

(xii) redeem or repurchase, directly or indirectly, any Membership Interest of the Project Company or declare, set aside or pay any dividends or make any other distributions (whether in cash or in kind) with respect to any Membership Interests;

(xiii) issue, sell, or transfer any notes, bonds, other debt securities, or any membership interest (including the Membership Interests) of the Project Company;

(xiv) cause the Project Company to acquire (by merger, consolidation, or acquisition of stock or assets or otherwise) any corporation, partnership, or other business organization or division thereof or collection of assets constituting all or substantially all of a business or business unit;

(xv) make, revoke, or change any Tax election, change any Tax accounting methods, policies, or practices, file any amended Tax Return or claim for refund, enter into any closing agreement, settle, or otherwise compromise any Tax claim or assessment, file any

request for rulings or special Tax incentives with any Governmental Authority, surrender any right to claim a refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, enter into any Tax allocation, sharing, reimbursement, or indemnity agreement, or take any other similar action, in each case, relating to the Project Company, the Project Assets or the Project;

(xvi) cause the Project Company to incur, create, or assume any Lien other than Permitted Encumbrances created in the ordinary course of business;

(xvii) cause the Project Company to enter into any transaction or contract with Developer or any of its Affiliates (except as contemplated by this Agreement);

(xviii) change or authorize any change in the organizational documents of the Project Company;

(xix) amend or materially modify the organizational documents of Developer in a manner that would have a material adverse effect on the ability of Developer to consummate the transactions contemplated by this Agreement;

(xx) take any action that would result in any additional Governmental Authority having jurisdiction over the Project Company or the Project, except as contemplated Sections 6.14, and 7.6;

(xxi) amend, modify, terminate, or fail to renew or replace any insurance policy listed on Schedule 6.21, or cause any such policy to no longer be in full force and effect without replacement, fail to pay premiums owed with respect to any such policy and provide a notice of cancellation or termination of any such policy;

(xxii) materially and adversely amend or modify, fail to maintain or obtain, or terminate any Permit of the Project Company;

(xxiii) hire any employees or establish, adopt, amend, or commence participation in, or incur any liability under, any Benefit Plan, in each case, in respect of Project Company;

(xxiv) solicit third parties to acquire the Project or the Project Company;

(xxv) knowingly take or fail to take any action that would reasonably be expected to materially adversely affect the Project or the Project Assets; or

(xxvi) commit or agree to do any of the foregoing.

(b) Notwithstanding Section 9.2(a) or any other provision herein, Developer may, and may cause the Project Company to, without the consent of Buyer, take commercially reasonable actions with respect to Emergency Conditions (as defined in the Interconnection Agreement) occurring at the Project Site.

9.3 Developer's Payment Responsibilities

(a) Notwithstanding anything herein to the contrary, Developer is responsible for all payments pursuant to (i) the EPC Contract and (ii) any other Project Contracts payments, milestone payments, and any other obligations arising thereunder on or prior to Closing. In addition, from and

after Closing, Developer shall be responsible for the payment of all Construction Costs, other than with respect to any Buyer Construction Costs, which shall be the responsibility of Buyer.

(b) Developer is responsible for all Interconnection Costs that are the responsibility of the Interconnection Customer (as such term is defined in the Interconnection Agreement) incurred or payable by the Interconnection Customer on or prior to Closing in accordance with the Interconnection Agreement. To the extent that any refund of any portion of the Interconnection Costs are returned or refunded to Project Company, Buyer, or any of Buyer's Affiliates, Buyer shall be entitled to such amount. If any additional Interconnection Costs are assessed by Transmission Provider against the Project Company after Closing, Developer shall be responsible for such additional Interconnection Costs.

9.4 Updating of the Disclosure Schedules.

(a) With respect to the representations and warranties contained in ARTICLE 5 of this Agreement, Developer shall supplement or amend the Developer's disclosure schedules with respect to any matter hereafter arising or discovered by the Developer which, if existing or known at the date of this Agreement would have been required to be set forth or described in the Developer's Disclosure Schedule in order for such representations and warranties to be true and correct (such supplementation or amendment an "Update"); provided that any such Update shall be delivered to Buyer promptly after arising or being discovered and in any event not later than five (5) Business Days prior to the Closing Date.

(b) If any Update includes information which relates to events or changes since the Execution Date that, individually or in the aggregate, has or could reasonably be expected to result in a Material Adverse Change (after taking into account all prior Updates delivered), then such Update shall be a "Material Update." Buyer may, in its sole discretion, as a result of a Material Update proposed by Developer, elect to terminate this Agreement upon notice to Developer without further liability of either Party.

(c) For the purposes of determining whether the conditions set forth in Section 3.6 have been fulfilled, Developer's Disclosure Schedule shall be deemed to include only that information contained therein on the date of this Agreement and shall be deemed to exclude all information contained in any update to Developer's Disclosure Schedule. If the Closing occurs, nothing in this Agreement shall prevent Buyer from pursuing indemnification for any Losses arising due to such Update or Material Update.

9.5 Support Obligations.

(a) No later than the date that is thirty (30) days following Closing, Buyer shall, with respect to any Support Obligations, deliver to the applicable beneficiary or counterparty (i) duly executed replacement or substitute guarantees, letters of credit, bonds, indemnities, and other surety obligations in replacement of the Support Obligations, in each case, in a form that satisfies the requirements of the beneficiaries of the Support Obligations, or (ii) evidence reasonably satisfactory to the beneficiaries of the Support Obligations that such replacement or substitute guarantees, letters of credit, bonds, indemnities, or other surety obligations are not required. Buyer shall use reasonable efforts to cause the beneficiary of each such Support Obligation to terminate, surrender, and redeliver to Developer each guaranty, letter of credit, or other instrument constituting or evidencing such Support Obligation.

(b) In the event that any Support Obligations are drawn upon after the Closing due to claims arising after the Closing, Buyer shall promptly, but in no event more than ten (10) Business Days following the occurrence thereof, indemnify and reimburse Developer for the amount of any such draw and any reasonable out-of-pocket costs incurred by Developer or any of its Affiliates in connection therewith; provided, that Buyer shall not be required to indemnify Developer for any claims that would be subject to indemnification by Developer pursuant to Section 19.1(a). For further clarity, if any Support Obligations are drawn upon after the Closing due to claims, actions or inactions arising before the Closing, Buyer will not be required to reimburse Developer for the amount of any such draw and any reasonable out-of-pocket costs incurred by Developer or any of its Affiliates in connection and Buyer shall not be required to indemnify Developer for any claims that would be subject to indemnification by Developer pursuant to Section 19.1(a).

(c) Developer shall cause the EPC Contract to include provisions that specify that no credit support shall be required if Buyer is the counterparty to such agreement.

ARTICLE 10 GENERAL OBLIGATIONS

10.1 Developer's General Obligations.

(a) In consideration of the Purchase Price, Developer's general obligations under this Agreement are as follows:

(i) Prior to Closing, use commercially reasonable efforts to cause the Project to achieve Mechanical Completion in accordance with the terms of this Agreement and the EPC Contract.

(ii) At Closing, convey to Buyer the Membership Interests, which shall thereby convey all Project Assets and rights to the Project; and

(iii) After Closing, perform the Construction Management Services in accordance with ARTICLE 12.

(b) On and prior to Closing, Developer shall work to accomplish its obligations, both independently and by and through the Project Company, as applicable.

(c) Developer shall cause the EPC Contract to include the right of the Buyer's Engineer to be present on the site on a permanent basis.

(d) On and prior to Closing, the Work shall be manufactured and executed in the manner set forth in [APPENDIX A] and all Work on the Project Site shall be carried out in accordance with the Requirements.

(e) Obligations Prior to Closing.

(i) Prior to and no later than five (5) Business Days after the Firm Date, Developer shall cause the Project Company to enter into an EPC Contract with material terms and conditions, taken as a whole, equal to or better (from Buyer's reasonable perspective as the future owner of the Project Company and except as otherwise approved by Buyer prior to execution of the EPC Contract) than those agreed to in connection with the achievement of the Firm Date.

(ii) Prior to the Closing, Developer shall:

(A) Obtain and maintain, or cause to be obtained or maintained, insurance on the Project and Project Site effective as of the start of construction in accordance with [APPENDIX F-1]; provided, that Developer shall notify Buyer if such insurance coverage is not available in the commercial marketplace on commercially reasonable terms, including therewith reasonable supporting documentation demonstrating Developer's inability to obtain such insurance in the commercial marketplace; provided, further, that following the foregoing notice, the Developer and Buyer shall meet to discuss reasonable alternatives to such insurance coverages;

(B) Deliver true, correct, and complete copies of draft and final Project reports and studies required to be delivered pursuant to this Agreement with respect to the Project;

(C) Use commercially reasonable efforts to ensure Buyer and the Buyer's Engineer and their respective representatives have a right to a representative with a full-time (during normal business hours) presence at the Project Site and a right to reasonably access and inspect the Project Site, the Project Assets, and the Books and Records;

(D) cause Contractor to carry out and complete the Work in all material respects in accordance with the requirements, duties and obligations imposed on Contractor pursuant to the EPC Contract;

(E) keep Buyer informed as to the status of material deliveries, and if Developer obtains actual knowledge that any Major Equipment is not being properly manufactured or fabricated in accordance with the requirements of the applicable Project Company Contract pursuant to which they were purchased, or do not otherwise conform with such requirements, promptly make Buyer aware thereof and take necessary corrective action;

(F) manage the interconnection queue process and pursue the completion of all necessary interconnection studies and processes, including any affected system studies;

(G) cause the Project Company to obtain and maintain all Permits that the Project Company is required to obtain and maintain under applicable Law to achieve Final Acceptance (other than ministerial Permits or Permits that will be obtained after Closing in the ordinary course);

(H) cause the Work to be supplied, including all materials, manufactured components and labor and services to be performed, shall be designed and executed in the manner set out in the EPC Contract.

(I) use commercially reasonable efforts to, and to cause Contractor to, include rights in the Major Supply Agreements to permit Buyer and the Buyer's Engineer to audit, inspect, test, and observe the Major Equipment at the facilities of the applicable Major Subcontractor, or the location where such Major Equipment is being transported or stored.

(J) ensure that all of the Project Assets are legally and beneficially owned or leased, as applicable, and titled (including leasehold title, as applicable) in the name of the Project Company; and

(K) perform all other tasks that are reasonably incidental to or otherwise implied by [APPENDIX A] to be necessary to achieve Mechanical Completion.

10.2 Contractor and Subcontractors.

(a) In connection with its performance of this Agreement, Developer shall, or shall cause Contractor to, purchase the Major Equipment from the Major Subcontractors set forth in [APPENDIX C] pursuant to the Major Supply Agreements, and Developer shall cause Contractor to procure any other materials, equipment, or other goods and services required for performance of the work under the EPC Contract.

(b) Buyer shall have no contractual obligation to and shall not be deemed to be in privity with Contractor or any other contractor by virtue of Buyer's rights and obligations under this Agreement.

(c) Prevailing Wage and Apprenticeship.

(i) Developer shall (i) satisfy the Prevailing Wage and Apprenticeship Requirements applicable to the Project and (ii) execute the EPC Contract for the Project that complies with Washington Administrative Code, Title 296, Chapter 140 ("WAC 296-140"), which requires that the EPC contractor utilize a Project Labor Agreement, Community Workforce Agreement or Collective Bargaining Agreement (each of which as may be defined or amended in WAC 296-140), as applicable, in a reasonable and customary form, for major construction activities associated with the construction of the Project and (iii) satisfy the requirements of Washington House Bill 1589 ("HB 1589") as related to the Project. For the avoidance of doubt, satisfying HB 1589 specifically includes the requirement that the Project will be constructed by a prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements.

(ii) Developer shall ensure that any laborers and mechanics employed by Developer, Contractor, or a Subcontractor that perform any portion of the Work that constitutes Construction, Repair or Alteration are paid wages at rates not less than the prevailing rates for work of a similar character in the locality where such Construction, Repair or Alteration is performed, in accordance with the Prevailing Wage and Apprenticeship Requirements. Developer shall maintain and preserve sufficient records, including books of account or records for work performed by a Contractor or Subcontractor, to establish that such laborers and mechanics were paid wages at rates not less than such prevailing rates, in accordance with the recordkeeping requirements under the PWA Guidance and Code Section 6001 and Treasury regulations section 1.6001-1, et seq.

(iii) Developer shall ensure that: (a) the percentage of the total labor hours of the Work constituting Construction, Repair or Alteration of the Project (including any such Work performed by any Contractor or Subcontractor) that is performed by Qualified Apprentices is at least equal to that percentage set forth in Code Section 45(b)(8)(A)(ii) applicable to the tax year in which the Project begins construction within the meaning of Code Section 45, 45Y, 48, or 48E, as applicable; (b) any such Work described in clause (a) hereof satisfies the

apprentice-to-journey worker ratios of the Department of Labor or the applicable State Apprenticeship Agency; and (c) if any of Developer, Contractor, or a Subcontractor employs four (4) or more individuals to perform Work constituting Construction, Repair or Alteration on the Project, such Person employs one (1) or more Qualified Apprentices to perform such Work; provided, however, that Developer shall be deemed to have satisfied the requirements in clauses (a) through (c) hereof if Developer provides written documentation reasonably satisfactory to Buyer demonstrating that, in accordance with the PWA Guidance, (i) Developer, Contractor or Subcontractor, as applicable, submitted a written request for Qualified Apprentices from a Registered Apprenticeship Program, (ii) either (I) such request was denied for reasons other than the failure of such Person to comply with the established standards and requirements of such Registered Apprenticeship Program, or (II) such Registered Apprenticeship Program failed to respond to such request within five (5) Business Days after the date on which such Registered Apprenticeship Program received such request, and (iii) Developer, Contractor or Subcontractor, as applicable, continued to make an additional request in writing within 120 days after each denial or failure to respond to the previous request. Developer shall comply with the general recordkeeping requirements under Code Section 6001 and Treas. Reg. § 1.6001-1, including maintaining books of account or records for Contractor or a Subcontractor, as applicable, in sufficient form to establish that the requirements under this Section 10.2(c)(ii) have been satisfied.

(iv) Notwithstanding the foregoing, Developer shall be responsible to manage relations among Developer, its Affiliates, its contractors and subcontractors and other local workers.

10.3 Opportunities for Other Contractors.

Prior to Closing, Developer shall, in accordance with Buyer's reasonable request and upon at least five (5) Business Days prior notice, afford to other contractors identified by Buyer all reasonable opportunities for carrying out their observation and inspection at the Project Site; provided, that the same shall not obstruct or disturb the progress of the Work and such other contractors shall comply with Developer's and Contractor's safety and security rules, restrictions, regulations, measures, and procedures, including Contractor's Safety Assurance Program, while accessing the Project Site. Prior to Closing, Developer shall also afford access to Buyer's employees, including employees who will operate and maintain the Project, in accordance with Buyer's reasonable request and upon at least five (5) Business Days prior notice, to perform their work at the Project Site; provided, that the same shall not obstruct or disturb the progress of the Work and Buyer and such employees shall comply with Developer's and Contractor's safety and security rules, restrictions, regulations, measures, and procedures, including Contractor's Safety Assurance Program, while accessing the Project Site. In connection with the rights of access granted to Buyer under this Section 10.3 and Section 10.4, Buyer shall indemnify, defend, and hold harmless each Developer Party and their respective Affiliates (including the Project Company) from and against any and all Claims arising from any personal injury, death, or physical property damage to the extent caused by the gross negligence or willful misconduct of Buyer, Buyer's Representative, their respective contractors, or their respective employees, or violation of Developer's or Contractor's rules, restrictions, regulations, measures, or procedures, including Contractor's Safety Assurance Program, by Buyer, Buyer's Representative, their respective contractors, or their respective employees.

10.4 Authority for Access for Inspection.

Prior to Closing, inspection of the Work at the Project Site and attendance at meetings (whether conducted in-person, telephonically or through similar medium) relating to the Project which are attended by Developer and Contractor or related to status, progress, quality, scope, schedule and coordination shall be afforded by Developer to Buyer, Buyer's Representative, and such other Persons as shall be designated by Buyer or Buyer's Representative, upon Buyer's reasonable request and upon at least five (5) Business Days prior notice. Buyer, in its inspection, shall give due consideration to the needs of Developer to carry out Developer's obligations and shall not hinder or unduly impede Developer while carrying out such inspection. Buyer, in its inspection, may observe the progress and quality of the Work to determine if the Work is proceeding in accordance with the Transaction Documents and Project Company Contracts. Inspections under this Section 10.4 are solely for the benefit of Buyer and any inspection or failure to inspect and any objection or failure to object by Buyer shall not (a) relieve Developer or Contractor of their respective obligations under any Project Company Contract, or (b) be used as evidence that Buyer agreed that Developer or Contractor had fulfilled any obligations under any Transaction Document or Project Company Contract or that Buyer had waived any of its rights under any Transaction Document. Buyer, Buyer's Representative, Buyer's employees, Buyer's invitees, and such other Persons as shall be designated by Buyer or Buyer's Representative shall follow and comply with Developer's and Contractor's safety and security rules, restrictions, regulations, measures, and procedures, including Contractor's Safety Assurance Program, at all times while present on the Project Site.

10.5 Developer's Representatives.

(a) Developer shall employ (directly or through contract) one or more competent representatives (each, a "Developer's Representative"), whose name or names and details of qualifications and previous experience shall have been provided to Buyer and Buyer's Representative by Developer, to manage the Work prior to Closing and who shall have Developer's authority in respect of all matters arising out of or in connection with this Agreement and the Work, except that such Developer's Representative shall not be entitled to amend or waive the terms of this Agreement.

(b) Key Personnel.

(i) Prior to beginning the Work, Developer shall provide to Buyer, a list setting forth the name of the natural Person for each Key Personnel of Contractor.

(ii) Developer shall give Buyer written notice in the event Contractor removes or changes any of its Key Personnel assigned to the Project or reassigns any such Key Personnel to another project.

10.6 Buyer's Representative.

(a) Buyer's Power to Delegate.

(i) Buyer may at any time delegate to its representative (the "Buyer's Representative") certain duties and obligations (other than its payment obligations) under this Agreement.

(ii) Buyer's Representative will act as the manager and coordinator of this Agreement on Buyer's behalf. Buyer's Representative shall act as the liaison for Buyer's communications with Developer and shall be present at the Project Site as necessary for the orderly progression of the Work, except as otherwise agreed by the Parties. Except with

respect to EPC Change Orders or amendments or modifications to this Agreement (which are outside the scope of authority of Buyer's Representative), and unless Buyer has provided written notice to Developer that Buyer's Representative is not authorized to accept or deliver such communications, all written communications given to or received from Buyer's Manager shall be deemed given to or received from Buyer.

(iii) Buyer's Representative shall not have authority to amend or modify any provisions of this Agreement. The acts and omissions of Buyer's Representative with respect to this Agreement are deemed to be the acts and omissions of Buyer and shall be fully binding upon Buyer.

(b) Duties of Buyer's Representative. Buyer's Representative shall carry out such duties as are specified in this Agreement.

10.7 Spare Parts Inventory.

(a) The EPC Contract shall include all spare parts and consumables necessary for the installation, startup, and commissioning of the Project and the complete performance of the Work through Final Acceptance. Such spare parts and consumables shall be located at the Project Site on or prior to Substantial Completion and available to Developer Parties to ensure that all Work, including testing and commissioning activities, continues unimpeded by the absence of such onsite spare parts and consumables.

(b) The EPC Contract shall require that, prior to Substantial Completion, Contractor submit to Project Company a proposed list of spare parts and associated pricing for the operation of the Project following Final Acceptance. If Buyer elects to purchase any such spare parts, the cost of such spare parts shall be considered Buyer Construction Costs for purposes of this Agreement.

10.8 Records and Accounts.

(a) Developer and Project Company shall maintain all records and accounts in accordance with GAAP consistently applied and in Dollars in order to support any and all invoices, Claims, and disputes under this Agreement. Developer shall permit Buyer, upon reasonable prior notice and during business hours, to audit Developer's records and accounts related to the Membership Interests and the Project to verify invoice amounts and to confirm any increases or decreases to the EPC Contract Price and any EPC Change Orders, as well as any report or material correspondence related to Project Company Permits or safety or environmental compliance.

(b) With respect to the Work described in Section 10.2(c), Developer shall submit, on a quarterly basis beginning for the quarter in which the Work described in Section 10.2(c) first commences and ending at the end of the Warranty Period, written documentation demonstrating compliance with Section 10.2(c) in the forms set forth in EXHIBIT C (the "Quarterly Prevailing Wage and Apprenticeship Certificate"). Buyer may provide comments identifying in good faith any errors, omissions, or other concerns related to such documentation and Developer's performance of its obligations under Section 10.2(c) and may direct Developer to take any commercially reasonable corrective actions Buyer reasonably believes are warranted.

(c) The Developer shall establish and maintain on a current basis proper, accurate and complete books, records and accounts of all operating data in relation to the Project Company, the Project Assets, and the Project as may be necessary or reasonably requested by the Buyer to verify the Developer's compliance with this Agreement and to enable the Buyer to perform its obligations

and comply with the requirements of applicable Laws (including accounting records required FERC's Uniform System of Accounts Prescribed for Public Utilities as and to the extent of the FERC Reporting Requirements), Required Permits, Transaction Documents, and Prudent Industry Practice.

10.9 Data Breaches.

Developer shall promptly notify Buyer upon Developer obtaining knowledge of the occurrence of any security breach, cyberattack, other data security, or cyber incident or unauthorized access to any Developer IT Asset, which resulted in the unauthorized access, unauthorized use, misappropriation, modification, encryption, corruption, disclosure, or transfer of any material information or data contained therein relating to the Project Company or the Project Assets.

ARTICLE 11 PROJECT SCHEDULE

11.1 Project Schedule.

Attached hereto as [APPENDIX B] is a preliminary project schedule setting forth the major tasks that must be completed in connection with the Work under the EPC Contract (each a "Milestone"), and completion dates for such tasks ("Milestone Completion Dates"), including the Critical Milestones and associated Critical Milestone Completion Dates which will be consistent with [APPENDIX E].

11.2 Form of Project Schedule.

The Project Schedule shall include the Critical Milestones and Critical Milestone Completion Dates set forth in [APPENDIX E]. The Project Schedule shall specify any tasks, obligations, or responsibilities under this Agreement that Buyer must perform or fulfill for Contractor to achieve the Milestone Completion Dates for each Milestone (each, a "Buyer Obligation"), and the date by which Buyer is required to fulfill each Buyer Obligation in accordance with this Agreement. Developer shall deliver the Project Schedule and any updates thereto in a native scheduling software format reasonably acceptable to Buyer.

11.3 Finalization of Project Schedule.

(a) Prior to execution of the EPC Contract, Developer shall work with Contractor to develop a final project schedule (the "Project Schedule") setting forth in more detail the Milestones and Milestone Completion Dates, including the Critical Milestones and Critical Milestone Completion Dates.

(b) Prior to execution of the EPC Contract, Developer shall submit a final Project Schedule to Buyer's Representative for its review and comment; provided, that Developer may not propose changes to any Critical Milestone or Critical Milestone Completion Date set forth in [APPENDIX E] to Contractor without Buyer's consent.

(c) If Buyer's Representative provides reasonable comments on any Project Schedule submitted by Developer, Developer shall work in good faith with Contractor to incorporate such comments and shall submit a copy to Buyer's Representative of the final form of Project Schedule.

11.4 Alterations and Updates to Project Schedule.

(a) Following delivery of the final Project Schedule, Developer shall not unilaterally, without the prior written consent of Buyer's Representative, make any material change to the Project Schedule, including changing any Critical Milestone or Critical Milestone Completion Date; provided, that Buyer shall respond to such request by Developer within ten (10) Business Days of receipt from Developer, and Buyer's failure to respond within such ten (10)-Business Day period shall be a Buyer-Caused Delay.

(b) Subject to Section 11.4(a), Developer may update the Project Schedule, in accordance with the EPC Contract; provided, that (a) the Milestone Completion Dates for the final three Milestones (Mechanical Completion, Substantial Completion, and Final Acceptance) remain unchanged; (b) the Critical Milestone Completion Dates for the Critical Milestones remain unchanged, including, in either case, commencement of the Work is delayed due to a Buyer-Caused Delay or Force Majeure; and (c) any Buyer-Caused Delay or Force Majeure that effect the Critical Milestone Completion Dates for the Critical Milestones must comply with the limitations set out in this Agreement.

11.5 Recovery of Project Schedule.

If Developer does not achieve a Critical Milestone by the specified date, as such Critical Milestone date may be extended on a day-for-day basis to the extent such Critical Milestone is delayed by an event of Force Majeure, delays caused by Buyer, or an Interconnection Delay (each such delay, an "Excused Delay"), Developer shall submit to Buyer, within ten (10) Business Days of such missed Critical Milestone completion date, a remedial action plan ("Remedial Action Plan") that describes in detail a reasonable course of action and plan (including accelerating the Work, for example, by using additional shifts, overtime, additional crews or resequencing of the Work, as applicable) to achieve the missed Critical Milestones and all subsequent Critical Milestones; provided, however, that delivery of any Remedial Action Plan shall not relieve Developer of its obligation to meet any subsequent Critical Milestones. If Developer misses a Critical Milestone, the frequency of Developer Progress Reports required under Section 11.6(a) shall increase to weekly until Developer meets the missed Critical Milestone and any subsequent Critical Milestone by the specified date for such Milestone. Developer's failure to provide and/or timely implement a Remedial Action Plan within the time requirements and to the extent required in this Section 11.5 shall be material breach of this Agreement.

11.6 Progress Reports.

(a) Following delivery of the final Project Schedule, Developer shall provide Buyer a progress report (which, for the avoidance of doubt, may be in the form of an email update, unless Buyer shall object to the email form, at which time the progress reports shall be in a form to be reasonably agreed between the Parties) addressing all material progress in the Work (each a "Developer Progress Report") every (i) two (2) weeks, for any time period prior to the Closing Date, for Work, if any, performed during the previous two (2) week period to the extent not addressed in the applicable Contractor Progress Report and (ii) week, for any time period following the Closing Date until Substantial Completion, for Work, if any, performed during the previous week to the extent not addressed in the applicable Contractor Progress Report. Developer shall promptly notify Buyer in writing at any time that Developer has reason to believe that there will be a material deviation in the Project Schedule and shall set forth in such notice the corrective action planned by Developer to remedy the same.

(b) In addition to providing the Developer Progress Reports, from and after execution of the EPC Contract until Substantial Completion, Developer shall cause to be Made Available to Buyer each progress report provided by Contractor under the EPC Contract (each, a “Contractor Progress Report”) within five (5) Business Days after receipt of such Contractor Progress Report from Contractor.

11.7 Progress Meetings.

Progress meetings between Developer and Buyer will be held upon Buyer’s reasonable request prior to Substantial Completion, but shall not be more frequent than once every two (2) weeks unless otherwise agreed by the Parties. Buyer, Buyer’s Representative, and Buyer’s Engineer shall be entitled to attend such progress meetings. Progress meetings will be utilized to review the progress of the Work and its compliance with the Project Schedule and discuss any delays, unusual conditions, or critical items, which have affected or could affect the progress of the Work.

ARTICLE 12 CONSTRUCTION MANAGEMENT

12.1 Construction Management Services.

Following the Closing Date until Final Acceptance, Developer shall perform, or cause the performance of, the construction management services set forth on [EXHIBIT G] hereto, (the “Construction Management Services”) in a good and workmanlike manner and in accordance with applicable Law, the EPC Contract, the Major Supply Agreements, [APPENDIX A] and Prudent Construction Management Practices; provided, that it shall not be a breach of this Section 12.1 and Developer shall not be liable hereunder or under any Contract, including the EPC Contract, for (a) any actions taken by Developer at the express direction and with the prior written approval of Buyer (except for those arising out of Buyer’s enforcement of its rights and remedies under this Agreement), (b) any actions taken by the Project Company that unduly interfere with or delay (x) Developer’s performance of the Construction Management Services or (y) Contractor’s performance of the Work, (c) Buyer’s failure to timely pay any undisputed Buyer Construction Costs, or (d) any failure of performance of Developer to the extent arising out of (x) Force Majeure, (y) a Buyer-Caused Delay, or (z) failure of Buyer to respond to a request for consent or approval in a timely manner in accordance with Section 25.27. Following the Closing Date until Final Acceptance, (i) except as expressly limited herein, Buyer hereby designates and appoints Developer as its representative to perform the Construction Management Services, and (ii) Developer hereby accepts such designation and appointment. Developer shall be an independent contractor and shall not have any fiduciary or quasi-fiduciary duties to Buyer or the Project Company, or any member or director of Buyer or the Project Company.

12.2 Personnel.

Following the Closing Date, Developer shall provide (directly or via subcontract) an appropriate number of suitably qualified, competent and experienced management personnel necessary to perform the Construction Management Services. Developer shall pay all wages and benefits required by applicable Law or contract with respect to personnel performing the Construction Management Services. Developer shall be responsible for all matters relating to labor relations (including confirming labor union agreement with applicable project labor agreements), working conditions, training, employee benefits, safety programs and related matters pertaining to such personnel, including, if applicable, with any prevailing wage, project labor or other requirements, in each case, in connection with the performance of the Construction Management Services.

12.3 Actions Requiring Buyer's Approval.

Following the Closing Date, and except as expressly set forth in this Agreement, Developer shall not (and shall not permit any of its subcontractors, agents or representatives to) without Buyer's written approval (subject to Section 25.27):

(a) sell, assign, lease, convey, or make any license, exchange or other transfer or disposition of any property or assets of Buyer, Contractor or the Project; provided, however, that Developer shall be allowed to dispose of immaterial minor items that are not necessary for the operation and maintenance of the Project, such as worn-out parts, used consumables, or other sundry items which are no longer of value to the operation or maintenance of the Project;

(b) pledge, mortgage, encumber, or grant a security interest in any property or assets of Buyer, Contractor, or the Project;

(c) make, enter into, execute, amend, terminate, modify or supplement any contract or agreement on behalf of Buyer;

(d) settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any Claim, suit, debt, demand or judgment against or due by, Buyer or submit any such Claim or stipulate in respect thereof to a judgment, or consent to the same;

(e) hire, engage, retain, fire or remove any advisors, consultants or subcontractors for or on behalf of Buyer;

(f) engage in any other transaction on behalf of Buyer not otherwise expressly permitted under this Agreement;

(g) approve or certify the successful completion of any performance test under the EPC Contract;

(h) amend, modify, terminate, or waive any right of Buyer or the Project Company under the EPC Contract or any Major Supply Agreement;

(i) declare an event of force majeure or event of default under the EPC Contract or any Major Supply Agreement;

(j) take any action that, to the knowledge of Developer, would reasonably be expected to result in a default under the EPC Contract or any Major Supply Agreement (in each case taking into account any applicable notice or cure period); or

(k) consent to, approve or ratify any action taken by the Contractor or any Major Subcontractor to modify the equipment or services.

12.4 Cooperation.

Developer shall fully cooperate with Buyer, Buyer's consultants and contractors, and the Independent Engineer and the Buyer's Engineer in its performance of the Construction Management Services. Buyer shall fully cooperate with Developer in its performance of the Construction Management Services.

12.5 Access.

Effective as of the Closing Date, Buyer hereby grants to Developer and its employees, representatives, agents, and subcontractors, non-exclusive rights of access, ingress, and egress to the Project Site, including access sufficient for Developer to perform the Construction Management Services in a timely manner; provided that Developer and its employees, representatives, agents, and subcontractors shall comply with Buyer's, Project Company's and Contractor's safety and security rules, restrictions, regulations, measures, and procedures, including Contractor's Safety Assurance Program, while accessing the Project Site. Buyer shall, at all reasonable times and upon reasonable prior notice during regular business hours, make the properties, assets, books, records and other information of the Project Company and pertaining to the Project available to Developer necessary for Developer to perform the Construction Management Services. In connection with the rights of access granted to Developer under this Section 12.5, Developer shall indemnify, defend, and hold harmless Buyer and its Affiliates from and against any and all claims arising from any personal injury, death, or physical property damage to the extent caused by the violation of Buyer's rules, restrictions, regulations, measures, or procedures, by Developer, its contractors, or its or their employees, representatives, agents, and subcontractors.

12.6 No Liens.

Developer shall keep and maintain the Project and the Project Site free and clear of all Liens (other than those arising as a matter of Law) resulting from the Developer's performance of the Construction Management Services. Developer shall notify Buyer of any such Lien and as soon as reasonably practicable pay or discharge any such Lien.

12.7 Emergency Conditions.

Notwithstanding anything to the contrary in this Agreement, in the event that Developer reasonably determines that (a) an Emergency Condition exists and (b) pre-approval by Buyer of an applicable expenditures reasonably necessary in order to mitigate or remedy an Emergency Condition (the "Emergency Expenditures") is impracticable (i) because of sudden, unanticipated, or unexpected events or (ii) to comply with emergency orders of any governmental authority, Developer may, without prior notice to or approval from Buyer, act in a manner consistent with the Requirements to take such steps and incur such Emergency Expenditures that are reasonably required to remedy, mitigate, or otherwise resolve such Emergency Condition. In such event, Developer will, as soon as reasonably practicable (but in any event no more than twenty-four (24) hours after becoming aware of such Emergency Condition), notify Buyer of the existence or occurrence of such Emergency Condition, the corrective action taken or proposed to be taken, and the actual or estimated amount(s) of Emergency Expenditures related thereto. Upon final resolution of an Emergency Condition, Developer shall promptly prepare and deliver to Buyer a final report (with supporting documentation satisfactory to Buyer) of all Emergency Expenditures incurred by or on behalf of Buyer in carrying out the services required to remedy, mitigate, or otherwise resolve such Emergency Condition.

ARTICLE 13 DRAWINGS

13.1 Buyer Design Review.

(a) Developer shall promptly provide to Buyer any designs, drawings, reports or other material documentation provided by Contractor under the EPC Contract.

(b) Developer will ensure that all designs, drawings, reports or other material documentation provided by Contractor under the EPC Contract are in accordance with the Buyer Design Specifications as contained in [EXHIBIT I].

(c) Developer will ensure that the EPC Contract provides Buyer, Buyer's Representative, and Buyer's Engineer (the "Buyer Design Review Parties") with commercially reasonable review rights, in respect of certain design drawings, specifications, and similar documents which shall set forth in detail the requirements for the construction of the Project, including the right to review (i) thirty percent (30%) systems designs, (ii) ninety percent (90%) systems designs, and (iii) issued for construction designs ("Design Documents"). The Design Documents shall incorporate engineering and design specifications for the Project for an installed capacity equal to the Planned Nameplate Capacity.

(d) The Buyer Design Review Parties will have (i) thirty (30) Business Days, in the case of the thirty percent (30%) systems designs, and (ii) thirty (30) Business Days, in the case of all other Design Documents, in each case, from receipt of the applicable Design Documents to provide comments. Such comments will address conformance of such Design Documents to the Technical Specifications [(as defined in APPENDIX A)] and the Transaction Documents.

(e) If the Buyer Design Review Parties timely provide comments on any Design Documents, Developer shall provide such comments to Contractor and use commercially reasonable efforts to cause Contractor to incorporate such comments.

13.2 Inspection of Drawings.

Prior to Closing, Developer shall maintain and provide to Buyer's Representative upon the reasonable request of Buyer's Representative a complete list of drawings, identifying which are approved for construction. Buyer and Buyer's Representatives shall have the right at all reasonable times prior to Closing upon at least five (5) Business Days advance notice to Developer to inspect all drawings of any part of the Work.

13.3 Duty to Advise of Defects, Errors, and Omissions.

Developer shall promptly advise Buyer upon it becoming aware of any Defect in any Work performed or Equipment or the Project supplied or used by Developer Parties or error or omission that might affect the Work, the Equipment, or the Project and its operability, operational life, or maintenance.

ARTICLE 14

EPC MILESTONES AND TRANSFER OF CARE, CUSTODY AND CONTROL

14.1 EPC Milestones in the EPC Contract.

(a) Developer shall cause the EPC Contract to have the following Milestones and Milestone Completion Dates: (i) Mechanical Completion; (ii) Guaranteed Mechanical Completion Date; (iii) Substantial Completion; (iv) the Guaranteed Substantial Completion Date; and (v) Final Acceptance.

(b) Developer shall cause the EPC Contract to include a review of the Milestones by the Buyer (or the Buyer's Representative) and an Independent Engineer, and the Developer shall cause a schedule of the Buyer's review of the Milestones to be contained in the EPC Contract.

14.2 Notice of Mechanical Completion.

(a) As soon as reasonably practicable following Contractor's delivery of the EPC Certificate of Mechanical Completion in accordance with the EPC Contract, and in any event within two (2) Business Days' of Developer's receipt thereof, Developer shall (i) notify Buyer and Buyer's Engineer and (ii) provide Buyer and Buyer's Engineer with the EPC Certificate of Mechanical Completion.

(b) Within ten (10) Business Days after Developer's receipt of the EPC Certificate of Mechanical Completion, Developer shall provide to Buyer written notice of its recommendation to either accept or reject the EPC Certificate of Mechanical Completion. On the later of (i) ten (10) Business Days after Buyer's receipt of the EPC Certificate of Mechanical Completion or (ii) two (2) Business Days after receipt of Developer's recommendation regarding the acceptance or rejection thereof, Buyer shall, or shall cause Buyer's Engineer to, provide written notice to Developer of either: (i) its rejection of the EPC Certificate of Mechanical Completion (if reasonable cause exists for doing so) together with reasonable support for such rejection, or (ii) its acceptance of the EPC Certificate of Mechanical Completion, in which case, if Developer agrees that Mechanical Completion has been achieved, the Project Company shall countersign the EPC Certificate of Mechanical Completion and deliver such certificate to the Contractor, and Mechanical Completion shall be deemed to occur on the date set forth in the EPC Certificate of Mechanical Completion.

(c) If Buyer or Buyer's Engineer reasonably rejects the EPC Certificate of Mechanical Completion pursuant to Section 14.2(b), then Developer shall cause Contractor to remedy the deficiencies specified in Buyer's written notice, at Developer's cost and expense. Upon completion of such remedial work and Contractor's belief that Mechanical Completion has been achieved, Contractor may issue a new EPC Certificate of Mechanical Completion to Developer.

(d) The foregoing procedure shall be repeated until Buyer accepts, or is deemed to have accepted, the EPC Certificate of Mechanical Completion pursuant to Section 14.2(b). Disputes as to whether Contractor has achieved Mechanical Completion shall be resolved pursuant to ARTICLE 22.

14.3 Title; Risk of Loss; Care, Custody and Control.

(a) Developer shall cause the EPC Contract and the Major Supply Agreements to provide that title with respect to the Work, including all Equipment supplied by or on behalf of Contractor or any Major Subcontractor, shall transfer to the Project Company, free and clear of all liens, claims, security interests or other encumbrances, other than Permitted Encumbrances, and shall vest in the Project Company on the earlier of (i) the date on which the said Equipment is delivered to the Project Site or (ii) the occurrence of any event under any applicable Law whereby title passes to Buyer.

(b) Developer shall cause the EPC Contract to provide that (i) risk of loss with respect to the Work, including all Equipment supplied by or on behalf of Contractor and the Project, shall pass to the Project Company as of the Substantial Completion Date and (ii) care, custody, and control of the Work, including all Equipment all Equipment supplied by or on behalf of Contractor and the Project, shall be transferred to the Project Company as of the Substantial Completion Date.

ARTICLE 15 TAX MATTERS

15.1 Tax Indemnification.

Developer shall defend, indemnify, and hold harmless the Buyer Indemnified Parties from, for, and against any Pre-Closing Taxes. Buyer shall defend, indemnify, and hold harmless the Developer Indemnified Parties from, for, and against any Taxes with respect to the Project Company, the Project Assets, or the Project that are not Pre-Closing Taxes.

15.2 Transfer Tax.

Developer shall be solely responsible for any sales, use, value added, gross receipts, excise, registration, stamp duty, transfer, or other similar Taxes or governmental fees (including any interest or penalties related thereto) that are imposed on or in connection with, or arise from the development, design, engineering, construction and commissioning of the Project and the Work and Buyer's purchase of the Membership Interests in the Project Company pursuant to this Agreement (collectively, "Transfer Taxes"), irrespective of the party upon whom such Transfer Taxes are imposed under applicable Law, and irrespective of when such Transfer Taxes are imposed, assessed or due under applicable Law. Developer or the Project Company shall prepare and file all Tax Returns for any Transfer Taxes and shall remit the Transfer Taxes shown as due on each such Tax Return (except where such Tax Returns are required to be filed by Buyer under applicable Law, in which case Buyer shall be responsible for the preparation and filing of such Tax Returns, and the payment of such Transfer Taxes). Upon Buyer's payment of any Transfer Taxes to any Governmental Authority, Developer shall promptly pay or reimburse Transfer Taxes to Buyer. Buyer and Developer shall, upon request, provide each other with reasonable cooperation and use their commercially reasonable efforts to prepare, obtain, provide, or file any exemption certificate, documentation, or information or other document as may be available under applicable Law to mitigate, reduce, or eliminate any Transfer Taxes.

15.3 Purchase Price Allocation.

The Parties acknowledge and agree that, for federal income Tax purposes (and state, local, and foreign income Tax purposes, as applicable), the sale of the Membership Interests is properly treated as a sale to Buyer of all of the assets of the Project Company and an assumption by Buyer of all of the liabilities of the Project Company. Within ninety (90) days after the Closing Date, Buyer shall prepare and provide to Developer an allocation of the Purchase Price and any liabilities properly included for U.S. federal income Tax purposes among the assets of the Project (the "Proposed Purchase Price Allocation"). Within thirty (30) days of receipt of such Proposed Purchase Price Allocation, Developer shall provide to Buyer any comments with respect to such Proposed Purchase Price Allocation, and Buyer and Developer will thereafter work together in good faith to resolve any disagreement with respect to such Proposed Purchase Price Allocation to agree on a final Purchase Price allocation (the "Final Purchase Price Allocation"). Buyer and Developer shall file all Tax Returns in a manner consistent with the Final Purchase Price Allocation and shall not take any position on any Tax Return, in any audit, administrative, or judicial proceeding, or otherwise that is inconsistent with the Final Purchase Price Allocation except as otherwise required applicable Law; provided, however, that if Developer and Buyer are unable to resolve any disagreements with respect to the Proposed Purchase Price Allocation within thirty (30) days after Buyer's receipt of Developer comments (if any) to the Proposed Purchase Price Allocation (or such longer period as may be agreed upon in writing by

Developer and Buyer), the Developer and the Buyer may take inconsistent Tax reporting positions with respect to the allocation of Final Purchase Price hereunder.

15.4 Tax Benefits.

(a) Neither Developer nor any Affiliate of Developer will take any action that would otherwise cause to be untrue, incorrect or incomplete any certification contained in the Quarterly Prevailing Wage and Apprenticeship Certificates. Developer will notify Buyer within ten (10) days of receipt by Developer or any of its Affiliates of a written notice of a U.S. federal or state Tax audit or inquiry regarding the eligibility of the Project for Tax Benefits. All Tax Benefits attributable to, resulting from or arising in connection with the Project shall belong to Buyer.

(b) Developer or any Affiliate of the Developer will not:

(i) incorporate into the Project or Project Assets any components of tangible personal property (or other tangible property used as an integral part of the Project or Project assets) that have been used by any Person other than in the development, construction, or startup of the Project;

(ii) (A) claim any depreciation deductions, amortization deductions, tax credits (including the ITC or PTC), or other credits, deductions or allowances (other than tax credits or deductions or amortization associated with research or experimental expenditures under Section 41 or 174 of the Code, which Developer or Affiliate(s) of the Developer may claim) or (B) make any election under Section 6417 or Section 6418 of the Code, in each case with respect to the Project or any property that is part of the Project or the Project Assets;

(iii) submit or file an application for a grant or rebate program, or apply the proceeds of such program to any portion of the property that is part of the Project or the Project Assets, if doing so would cause a reduction in the amount of the ITC or PTC with respect to the Project or the Project Assets;

(iv) enroll all or any portion of the Project Site in the U.S. Department of Agriculture's Conservation Reserve Program;

(v) cause any property that is part of the Project or the Project Assets to be (i) "tax-exempt bond financed property" within the meaning of Section 168(g)(5) of the Code or "tax-exempt use property" within the meaning of Section 168(h) of the Code, (ii) imported property of the kind described in Section 168(g)(6) of the Code and subject to Section 168(g)(6)(A) of the Code, or (iii) property used by a Person described in Section 50(b)(3) of the Code; or

(vi) enter into any amendment, side agreement or letters or other understandings that would amend, waive or modify the subject matter, terms or conditions of any agreement described in the Quarterly Prevailing Wage and Apprenticeship Certificates.

15.5 Tax Returns.

(a) Developer shall prepare and duly and timely file all Tax Returns required to be filed by or with respect to the Project Company, the Project Assets and the Project for any taxable period ending on or before the Closing Date, and such Tax Returns shall be prepared in accordance with applicable Laws and this Agreement. Developer shall provide Buyer with copies of all such Tax Returns (except, for the avoidance of doubt, federal and applicable state income Tax Returns of

Developer) at least fifteen (15) Business Days prior to the due date of such return (taking into account any valid extensions thereof) for Buyer's review and comment, and Developer consider in good faith any of Buyer's comments that are requested reasonably at least five (5) Business Days in advance of the due date (taking into account any valid extensions thereof).

(b) Except for Tax Returns for Transfer Taxes required to be prepared and filed by Developer as set forth in Section 15.2, Buyer shall prepare and duly and timely file all Tax Returns required to be filed by or with respect to the Project Company, the Project Assets, and the Project with respect to any Straddle Period, and such Tax Returns shall be prepared in accordance with applicable Laws and this Agreement. Buyer shall provide Developer with copies of all such Tax Returns (except, for the avoidance of doubt, federal and applicable state income Tax Returns of Buyer) at least fifteen (15) Business Days prior to the due date of such return (taking into account any valid extensions thereof) for Developer's review and comment, and Buyer shall consider in good faith any of Developer's comments that are requested reasonably at least five (5) Business Days in advance of the due date (taking into account any valid extensions thereof). Developer shall remit Developer's allocable share of any Taxes due by or with respect to the Project Company, the Project Assets or the Project in respect of any Straddle Period (calculated in accordance with Section 15.5(c)) to Buyer within five (5) days of Buyer's request therefor, except to the extent such Taxes were taken into account in the Purchase Price as Pro-ratable Items.

(c) All real and personal property Taxes that are due or become due with respect to the assets and properties of the Project Company, the Project Assets or the Project for any Straddle Period shall be apportioned between Developer, on the one hand, and Buyer, on the other hand, as of the Closing Date, based on the ratio of the number of days in the Straddle Period through (and including) the Closing Date, on the one hand, to the number of days in the Straddle Period after the Closing Date, on the other hand. Subject to the foregoing sentence, with respect to any Straddle Period, the amount of Taxes allocable to the portions thereof ending on (and including) the Closing Date and beginning on the day after the Closing Date shall be determined using an interim closing of the books method as of the close of business on the Closing Date.

(d) Neither Buyer nor the Project Company may file an amended Tax Return with respect to any Pre-Closing Tax Period or Straddle Period without the written consent of Developer, which shall not be unreasonably withheld, conditioned, or delayed. Any refund of Tax with respect to any Pre-Closing Tax Period relating to the Project Company, the Project Assets and the Project shall be the property of Developer, and any refund of any Tax with respect to any Straddle Period relating to the Project Company, the Project Assets and the Project shall be apportioned between Buyer and Developer in the manner set forth in Section 15.5(c) hereof.

15.6 Tax Contests.

Buyer shall notify Developer upon receipt by Buyer, the Project Company, or any of Buyer's other Affiliates of a written notice of a U.S. federal or state Tax audit or assessments that may materially affect the Tax liabilities of the Project Company, and for which Developer is or may be liable hereunder, as soon as reasonably practicable after receiving such notice but in any event within fifteen (15) days of such receipt; provided that failure to comply with this provision shall not affect Buyer's right to indemnification hereunder, except to the extent such failure actually and materially prejudices Developer. Developer shall have the sole right to control any audit, action, claim, assessment, examination, levy, deficiency, adjustment, or other judicial or administrative proceeding by any Governmental Authority, and contest, resolve, and defend against any assessment for additional Taxes, notice of Tax deficiency or other adjustment of Taxes of or relating solely to one or more of the Project Company, the Project Assets, or the Project and solely with respect to a Pre-

Closing Tax Period; provided that (a) Developer shall provide written notice to Buyer of any such proceeding and keep Buyer reasonably apprised of the initiation and status of any such proceeding, (b) Buyer shall have the right, at its own expense, to review and comment on any written submissions and to participate in any proceedings relating to any such proceeding controlled by Developer, (c) Developer shall not settle any such proceeding without Buyer's written consent, which shall not be unreasonably withheld, conditioned, or delayed, and (d) Developer shall have no right control or contest any audit, action, claim, assessment, examination, levy, deficiency, adjustment, or other judicial or administrative proceeding with respect to Taxes reported on any consolidated, combined, unitary or similar Tax Return for which Buyer is a member. Buyer shall have the sole right to control any audit, action, claim, assessment, examination, levy, deficiency, adjustment, or other judicial or administrative proceeding by any Governmental Authority, and contest, resolve, and defend against any assessment for additional Taxes, notice of Tax deficiency or other adjustment of Taxes of or relating to the Project Company, the Project Assets, or the Project for all other taxable periods; provided, that with respect to any administrative or court proceeding relating to any Straddle Period, (i) Developer shall have the right, at its own expense, to review and comment on any written submissions and to participate in any proceedings relating to any such proceeding controlled by Buyer, (ii) Buyer shall provide written notice to Developer of any such proceeding and keep Developer reasonably apprised of the initiation and status of any such proceeding, and (iii) Buyer shall not settle any such proceeding without Developer's written consent, which shall not be unreasonably withheld, conditioned, or delayed.

15.7 Duties and Excises.

The Purchase Price includes any and all Import Taxes (including any related customs broker fees or similar charges imposed on the sale or delivery of the Project Assets, the Work, or the Project, and Developer shall duly and timely remit any such Import Taxes in accordance with all applicable Laws (including all customs and import duties arising upon the importation of the Equipment into the applicable port of entry). Developer shall provide Buyer such information and data as requested by Buyer, and fully cooperate, in connection with (i) the reporting of any such Import Taxes, (ii) any audit relating to any such Import Taxes, or (iii) any assessment, claim, or proceeding relating to any such Import Taxes.

15.8 Cooperation.

(a) Buyer and Developer shall cooperate fully, as and to the extent reasonably requested, in connection with the filing of Tax Returns and any audit, litigation, or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon request) the provision of records and information that are reasonably relevant to the filing of such Tax Returns and any such audit, litigation, or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

(b) The Parties will provide documents, information and data, make submissions to Governmental Authorities and otherwise cooperate as necessary to minimize the amount of any Washington State Retail Sales Taxes and Washington State Sales and Use Taxes payable in connection with the Work and the Project. Contractor shall make available to Buyer and claim any and all applicable tax exemptions, credits or deductions relating to the Work available to itself or Buyer, including any sale-for-resale exemption and any manufacturing machinery and/or equipment exemption. At the direction of Buyer, Contractor shall take such action as may be reasonably required to allow any of the Project equipment or property included within the Project to qualify for any applicable Washington State Retail Sales Taxes or Washington State Sales and Use Taxes

exemptions. In connection with the purchase of any Project equipment or property from its Subcontractors and vendors, Contractor shall provide its Subcontractors and vendors a reseller and exemption certificate reflecting the fact that Contractor is purchasing such Project equipment or property for resale to Buyer or purchasing such Project equipment or property exempt from Washington State Retail Sales Taxes or Washington State Sales and Use Taxes, as applicable.

15.9 Coordination with General Indemnification.

The provisions of this ARTICLE 15 shall govern the indemnification rights and obligations of Buyer Indemnified Parties and Developer Indemnified Parties with respect to Tax matters in the event of any conflict or overlap between the provisions of ARTICLE 22 and this ARTICLE 15, and, for the avoidance of doubt, any Claim arising under both this ARTICLE 15 and ARTICLE 19 shall be treated for all purposes of the Agreement (including ARTICLE 19) as arising solely under this ARTICLE 15.

ARTICLE 16 WARRANTIES OF WORK

16.1 Warranties.

Developer shall (i) cause the EPC Contract set forth in [EXHIBIT E] to include the scope of warranties and the procedures (the “Warranty”), and (ii) use commercially reasonable efforts to procure, or cause Contractor to procure, from each Major Subcontractor the Major Equipment Warranties set forth in [APPENDIX D].

ARTICLE 17 LIQUIDATED DAMAGES

17.1 General.

The Parties agree that it is difficult or impossible to determine with precision the amount of damages that would be incurred by Buyer as a result of Contractor’s failure to timely achieve Mechanical Completion by the Guaranteed Mechanical Completion Date. Accordingly, the Parties expressly agree that if Contractor fails to timely achieve Mechanical Completion by the Guaranteed Mechanical Completion Date, any sums which would be payable under this ARTICLE 17 because of such failures are liquidated damages and not a penalty, and are fair and reasonable and any such sums represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failures.

17.2 Delay Liquidated Damages.

(a) Subject to Section 17.3, if the Project fails to achieve Mechanical Completion on or prior to the Guaranteed Mechanical Completion Date, then Developer shall pay Buyer liquidated damages on a daily basis equal to \$[___] per MW of the Planned Nameplate Capacity per day for each day that the Project fails to achieve Mechanical Completion (the “Mechanical Completion Delay Liquidated Damages”); provided, that in no event shall Developer be required to pay Mechanical Completion Delay Liquidated Damages in excess of [_____] Million Dollars (\$[_____] (the “Delay Liquidated Damages Cap”); provided, further, that the Guaranteed Mechanical Completion Date will be extended on a day-for-day basis, to the extent that Mechanical Completion is delayed and the Developer can demonstrate to the Buyer’s reasonable satisfaction that a delay to the critical path of the Work has occurred and is attributable to any of the following: (a) Buyer-Caused Delays, (B) Interconnection Delays or (c) Force Majeure. Notwithstanding the foregoing, subject to compliance

by Developer of its obligation to mitigate such delays, the Guaranteed Mechanical Completion Date may be extended for a maximum of one hundred eighty (180) days in the event Mechanical Completion is delayed due to Force Majeure or Interconnection Delays. If the Mechanical Completion has not been declared within [two hundred seventy (270) days] after the Guaranteed Mechanical Completion Date, it shall be considered an Event of Default and the Buyer may exercise their rights under this Agreement or exercise any other rights at law or equity.

(b) For the avoidance of any doubt, the Mechanical Completion Delay Liquidated Damages are only subject to the delays outlined in this Section 17.2. Any Delay Liquidated Damages (as defined in the EPC Contract, and whether for Mechanical Completion or Substantial Completion or any other milestone) are to be handled in accordance with Section 17.3 below.

(c) If the Substantial Completion Date is achieved with less than one hundred percent (100%) of the Planned Nameplate Capacity having achieved commercial operation, Developer shall use commercially reasonable efforts to achieve commercial operation for the outstanding and amount of Nameplate Capacity as soon as reasonably possible thereafter, but in any event within ninety (90) days thereafter. Should additional capacity be added within those ninety (90) days after the Substantial Completion Date, then the Substantial Completion Payment will be recalculated to account for the added capacity and a true up payment from the Buyer to the Developer will be made, if applicable.

17.3 EPC Contract and Major Supply Contract Liquidated Damages.

After the Closing, with respect to any failure by the Contractor to achieve Mechanical Completion (as defined in the EPC Contract) on or prior to the Guaranteed Mechanical Completion Date (as defined in the EPC Contract), Buyer shall cause the Project Company to seek Delay Liquidated Damages (as defined in the EPC Contract) from the Contractor to the maximum extent available under the EPC Contract. Any Delay Liquidated Damages (as defined in the EPC Contract, and whether for Mechanical Completion or Substantial Completion or any other milestone) that accrue after the Closing and are payable by Contractor to the Project Company shall be for the benefit of Buyer, not the Developer. Any Delay Liquidated Damages (as defined the EPC Contract) in respect to the failure to achieve Mechanical Completion on or prior to the Guaranteed Mechanical Completion Date and that accrue prior to the Closing and are payable by Contractor to the Project Company before or after Closing shall be for the benefit of the Developer, and not the Buyer, and, if any such Delay Liquidated Damages are paid to the Project Company after Closing, Buyer shall promptly pay, or cause the Project Company to pay, any such Delay Liquidated Damages to Developer; provided that any liquidated damages that are payable by Major Subcontractors are for the benefit of the Buyer and will not be subject to any claim by the Developer or any other party.

17.4 Calculations and Payments of Liquidated Damages.

(a) All amounts payable as liquidated damages under this ARTICLE 17 shall be made by Developer to Buyer no later than five (5) days after the final day of each month during which liquidated damages became payable. Buyer shall have the right to audit Developer's calculations of all liquidated damages. Developer shall itemize such calculations and such calculations shall include such supporting documentation as Buyer may reasonably request and shall be in sufficient detail to permit Buyer to verify each calculation. Buyer shall notify Developer, as soon as reasonably possible, of any portion of the calculations with which Buyer disagrees.

(b) Liquidated damages shall accrue interest at the Late Payment Rate, from the date such amount was due until paid.

ARTICLE 18 LIMITATION OF LIABILITY

18.1 Duty to Mitigate.

Except for losses indemnified pursuant to ARTICLE 15, but subject to any right or remedy which the Party may have under or by virtue of this Agreement, the Party establishing or alleging a breach or default of this Agreement or a right to recover damages or to be indemnified in accordance with this Agreement shall be under a duty to take all commercially reasonable actions necessary to mitigate any loss which has occurred.

18.2 Limitation of Liability.

SUBJECT TO THE OBLIGATION OF DEVELOPER TO PAY LIQUIDATED DAMAGES TO BUYER UNDER ARTICLE 17, AND OTHERWISE AS PROVIDED IN SECTION 18.3, AND EXCEPT AS TO A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, NEITHER DEVELOPER NOR BUYER SHALL BE LIABLE TO THE OTHER BY WAY OF INDEMNITY OR BY REASON OF ANY BREACH OF DEFAULT OF THIS AGREEMENT OR ANY STATUTORY DUTY OR TORT (INCLUDING NEGLIGENCE BUT EXCLUDING ANY DAMAGES PAYABLE TO A THIRD PARTY FOR WHICH EITHER PARTY IS RESPONSIBLE PURSUANT TO SECTION 19.1(A) OR SECTION 19.1(B), AS APPLICABLE) FOR ANY INDIRECT OR CONSEQUENTIAL (INCLUDING LOST PROFITS), MULTIPLE, PUNITIVE, OR EXEMPLARY DAMAGES THAT MAY BE SUFFERED BY THE OTHER; ; PROVIDED, THAT CLAIMS OR LIABILITIES DUE TO BREACH OF REPRESENTATIONS AND WARRANTIES IN THE QUARTERLY PREVAILING WAGE AND APPRENTICESHIP CERTIFICATES OR IN SECTION 6.17 THAT ARE ATTRIBUTABLE TO, RESULTING FROM OR ARISING IN CONNECTION WITH THE LOSS, DISALLOWANCE, REDUCTION OR RECAPTURE OF, OR INABILITY TO CLAIM, TAX BENEFITS SHALL NOT CONSTITUTE INDIRECT OR CONSEQUENTIAL (INCLUDING LOST PROFITS), MULTIPLE, PUNITIVE, OR EXEMPLARY DAMAGES FOR PURPOSES OF THIS AGREEMENT.

18.3 Enforceability of Liquidated Damages.

The Parties explicitly agree and intend that the provisions of this ARTICLE 18 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 to it under law or equity relating to the enforceability of the liquidated damages provisions set forth in this ARTICLE 18.

ARTICLE 19 INDEMNIFICATION

19.1 Indemnification.

(a) From and after the Closing, Developer shall defend, indemnify, and hold harmless Buyer and the other Buyer Indemnified Parties from, for, and against all Claims and Liabilities (including third party Claims and Liabilities) caused by, arising out of, or in connection with: (i) breach by Developer or any inaccuracy of its representations and warranties under this Agreement or in any certificate delivered by Developer hereunder; (ii) breach by Developer of its covenants, agreements, or obligations pursuant to this Agreement or any Transaction Document; (iii) Developer's fraud, gross negligence, or willful misconduct; and (iv) any Construction Costs or Interconnection Costs other than Buyer Construction Costs.

(b) From and after the Closing, Buyer shall defend, indemnify, and hold harmless Developer and its Affiliates, directors, officers, employees, and agents ("Developer Indemnified Parties"), from, for, and against all Claims and Liabilities (including third-party Claims and Liabilities)

caused by, arising out of, or in connection with: (i) breach by Buyer or any inaccuracy of its representations and warranties under this Agreement or in any certificate delivered by Buyer hereunder; (ii) breach by Buyer of its covenants, agreements, or obligations pursuant to this Agreement or any Transaction Document; (iii) Buyer's fraud, gross negligence, or willful misconduct; (iv) except to the extent part of Developer's obligations under this Agreement (including its indemnification obligations set forth herein, including pursuant to Section 19.1(a)), Claims or Liabilities of the Project Company first arising after the Closing Date; and (v) Buyer Construction Costs.

(c) Notwithstanding any other provision of this Agreement or any other Transaction Document, following the Closing Date, a Party seeking indemnification under this Agreement (the "Indemnified Party") shall not be entitled to make any Claim for indemnification under Section 19.1(a)(i) or Section 19.1(b)(i), above with respect to the inaccuracy of any representation or warranty unless and until the aggregate amount of all Claims and Liabilities for indemnification exceeds [__]% of the Purchase Price (the "Basket Amount"); provided, that any breach of any Fundamental Representations or Section 6.10, shall not be subject to the Basket Amount. If and when the Basket Amount is reached, the Indemnified Party shall be entitled to make a Claim for indemnification for Claims and Liabilities for the Basket Amount plus all amounts in excess of the Basket Amount with respect to the inaccuracy of such representations or warranties.

(d) Notwithstanding any other provision of this Agreement or any other Transaction Document, and except in the case of fraud (including intentional misrepresentation but excluding negligent misrepresentation), willful misconduct, or gross negligence of a Party, the aggregate liability of each Party under (i) Section 19.1(a)(i) or Section 19.1(b)(i), as applicable, with respect to breaches of representations other than Fundamental Representations or Tax Benefit Representations, shall not exceed [twenty-five] percent ([25]%) of the Purchase Price paid to Developer as of such date and (ii) this Section 19.1 or otherwise arising out of this Agreement from any and all causes (whether based in contract, tort (including negligence), strict liability, law or equity, or any other cause of action), including with respect to any inaccuracy of any Fundamental Representations or Tax Benefit Representations of either Party or any indemnification obligations arising under Section 19.1(a) or Section 19.1(b), shall not exceed one hundred percent (100%) of the Purchase Price paid to Developer as of such date (the "Liability Cap"), except that the Liability Cap shall not apply to Liabilities arising out of (A) the fraud, gross negligence or willful misconduct of any Party, (B) any breach by Buyer of its obligations to pay any portion of the Purchase Price, or (C) Section 15.1, Section 19.1(a)(iv), Section 19.1(b)(iv), or Section 19.1(b)(v).

(e) The Indemnified Party shall give notice to the Party required to provide indemnification hereunder (the "Indemnifying Party") promptly after the Indemnified Party has actual knowledge of any Claim as to which indemnity may be sought hereunder, and the Indemnified Party shall permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of any Claim resulting therefrom; provided that:

(i) counsel for the Indemnifying Party who shall conduct the defense of such Claim shall be reasonably satisfactory to the Indemnified Party;

(ii) the Indemnified Party may participate in such defense at its own expense, except the Indemnifying Party shall reimburse the Indemnified Party for its participation in such defense to the extent that the Indemnifying Party requests the Indemnified Party to participate in its own defense; and

(iii) the omission by the Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the

extent that such omission results in a failure of actual notice to the Indemnifying Party and the Indemnified Party is damaged as a result of such failure to give notice.

Notwithstanding the foregoing, the Indemnifying Party may not settle any Claim or Liability related to the indemnity being provided hereunder without the consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed.

(f) With regard to any Claim or Liability which is the result of the joint or concurrent fault or negligence of Developer and Buyer or either Party and the Project Company, as the case may be, the Parties agree to jointly defend any Claim or Liability with respect thereto that is based on such joint or concurrent fault or negligence of Buyer and Developer or either Party and the Project Company, as the case may be. Any Liability or Claim of contribution or indemnification between Buyer and Developer relating to such Liabilities or Claims shall be resolved on the basis of the percentage of fault or negligence and the Parties agree to reserve the determination of such percentage until after resolution of such Claim or Liability. Such pro rata share shall be based upon a final judicial determination of the Parties' comparative fault or negligence or, in the absence of such determination, by mutual agreement of the Parties.

(g) Nothing in this Section 19.1 is intended to allow any Indemnified Party to be indemnified from and against any third party Claims and Liabilities caused by, arising out of, or in connection with the performance of this Agreement or any other Transaction Document to the extent any of such Claims or Liabilities were caused by, arose out of, or were in any way incidental to or in connection with its own breach of any representation, warranty, or obligation under this Agreement or any other Transaction Document to which it is a party or its negligence, gross negligence or willful misconduct.

(h) For the purposes of determining whether an Indemnified Party has the right to indemnification under this Section 19.1 and for the purposes of determining the amount of Claims or Liabilities under this Section 19.1, the representations and warranties contained in this Agreement that are qualified by reference to "material," "materially," "Material Adverse Change," or any similar term shall be deemed to have been made without giving effect to such materiality qualifiers and such certificates shall be deemed to have been delivered without any "material" qualification.

(i) If any Claim or Liability for which Buyer is entitled to indemnification under this Section 19.1 is the result of a breach by any counterparty to a Project Company Contract, including Contractor under the EPC Contract, Buyer shall use commercially reasonable efforts to cause the Project Company to fully pursue such Claim or Liability under the terms of the applicable Project Company Contract before seeking indemnification from Developer under this Section 19.1. The amount of any indemnity payment paid or payable under this Section 19.1 shall be reduced by the amount of any indemnity or other payment received by the Indemnified Party from any counterparty to a Project Company Contract in respect of the event giving rise to the right of indemnity under this Section 19.1; provided, however, that nothing herein shall entitle Developer to withhold any indemnification payment paid or payable under this Section 19.1 prior to actual recovery of any such payment from any such counterparty.

(j) The Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all Claims or Liabilities (other than Claims or Liabilities arising from fraud, gross negligence or willful misconduct on the part of either Party) for any breach of any representation, warranty, covenant, or agreement set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to Section 4.1, Section 8.2, Section 25.24, or the indemnification provisions set forth in Section 10.3, ARTICLE 15, and this ARTICLE 19. In furtherance of the

foregoing, each Party hereby waives, to the fullest extent permitted under applicable Law, any and all rights, claims, and causes of action for any breach of any representation, warranty, covenant, or agreement set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Party or its Affiliates, including as a tort claim, a claim under principles of strict liability, or a claim for breach of contract, except to the extent otherwise provided in the preceding sentence. Nothing in this Section 19.1 shall limit either Party's right to seek equitable relief pursuant to Section 25.25 or any remedy on account of any Party's fraud or willful misconduct.

(k) If the amount of Liabilities suffered by an Indemnified Party is, at any time subsequent to the making of an indemnity payment in respect thereof, reduced by recovery, settlement, or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement, or payment by, from, or against any Person (other than an Indemnifying Party), the amount of such reduction, together with any interest earned on such amount, if applicable, less any deductibles, costs, or expenses incurred by the Indemnified Party in connection therewith, shall be promptly paid by the Indemnified Party to the Indemnifying Party.

(l) Developer's total liability for any Claim for indemnification under ARTICLE 15 and Section 19.1(a)(ii) with respect to a breach of its covenants, agreements, or obligations under Section 10.2(c) or Section 10.8(b) shall not exceed the sum of the penalty amounts described in Code Sections 45(b)(7)(B)(i)(II) and 45(b)(8)(D)(i)(II) (including associated penalties and interest, if applicable, and any increases as set forth in Sections 45(b)(7)(B)(iii) and 45(b)(8)(D)(iii), as applicable); provided, however, that the indemnification limitations this Section 19.1(l) shall not apply unless Developer has made or caused to be made (or reimbursed Buyer for, if applicable) the correction payments described in Code Section 45(b)(7)(B)(i)(I) (as increased under Section 45(b)(7)(B)(iii), as applicable) to the applicable underpaid laborers and mechanics (if any) and provided documentation reasonably satisfactory to Buyer demonstrating its compliance with such obligation.

19.2 Survival Periods.

The Parties' obligation to indemnify one another consistent with the provisions of this ARTICLE 19 shall continue from and after the Closing Date as set forth in this Section 19.2. All liability of Developer and Buyer with respect to any representation, warranty, covenant, or agreement hereunder shall be extinguished at the end of the survival period corresponding thereto as set forth in subsections (a) and (b) of this Section 19.2; provided, that any representation, warranty, covenant or agreement as to which an indemnification claim has been asserted during the applicable survival period shall continue in effect with respect to such claim until such claim shall have been finally resolved or settled.

(a) Developer Indemnity of Buyer Indemnified Parties.

(i) Except as set forth in Section 19.2(a)(ii)-(iii) below, Developer's obligation to indemnify Buyer Indemnified Parties pursuant to Section 19.1(a)(i) shall survive for eighteen (18) months following the Closing Date other than the Environmental Matters, which shall survive thirty-six (36) months from the Closing Date.

(ii) Developer's obligation to indemnify Buyer Indemnified Parties pursuant to (A) Section 19.1(a)(i) for a breach of a Fundamental Representation, (B) Section 19.1(a)(iii), and (C) Section 19.1(a)(iv), in each case, shall survive indefinitely.

(iii) Developer's obligation to indemnify Buyer Indemnified Parties pursuant to Section 19.1(a)(i) for a breach of the representations and warranties set forth in Section 6.16

shall survive for a period of three (3) years following the Closing Date, and Developer's obligation to indemnify Buyer Indemnified Parties pursuant to Section 19.1(a)(i) for a breach of the representations and warranties set forth in Sections 6.17 shall survive through the applicable statute of limitations plus sixty (60) days.

(iv) Developer's obligation to indemnify Buyer Indemnified Parties pursuant to Section 19.1(a)(ii) shall survive until such covenants are fully performed; provided that Developer's obligation to indemnify Buyer Indemnified Parties pursuant to Section 19.1(a)(ii) with respect to a breach of its covenants, agreements, or obligations under Section 10.2(c) or Section 10.8(b) shall survive through the applicable statute of limitations plus sixty (60) days.

(b) Buyer Indemnity of Developer Indemnified Parties.

(i) Except as set forth in Section 19.2(b)(ii) below, Buyer's obligation to indemnify Developer Indemnified Parties pursuant to Section 19.1(b)(i) shall survive for eighteen (18) months following the Closing Date.

(ii) Buyer's obligation to indemnify Developer Indemnified Parties pursuant to (A) Section 19.1(b)(i) for a breach of a Fundamental Representation, (B) Section 19.1(b)(iii), (C) Section 19.1(b)(iv), and (D) Section 19.1(b)(v), in each case, shall survive indefinitely.

(iii) Buyer's obligation to indemnify Developer Indemnified Parties pursuant to Section 19.1(b)(ii) shall survive until such covenants are fully performed.

19.3 Tax Treatment of Indemnity Payments.

All indemnity payments under ARTICLE 15 or this ARTICLE 19 will be treated as a non-taxable adjustment of the Purchase Price, unless otherwise required by applicable Laws (as reasonably determined by Buyer).

**ARTICLE 20
INSURANCE**

20.1 Contractor's and Subcontractors' Insurance Coverage.

Prior to Closing, Developer shall maintain, shall cause the Project Company to maintain, and shall require and cause Contractor and each Major Subcontractor, while performing work on the Project Site, to provide, and pay for insurance coverage in accordance with the requirements of [APPENDIX F-1]. From and after Closing, Developer shall maintain the following coverages: Workers Compensation Insurance, Employer's Liability Insurance, Commercial Automobile Liability Insurance, Commercial General Liability Insurance, and Excess or Umbrella Liability Insurance. Buyer shall be responsible for obtaining and maintaining, at its sole cost and expense, its own insurance for and with respect to the Project Company for occurrences on and after the Closing Date.

20.2 Buyer's Insurance.

Buyer shall during the term of this Agreement maintain in full force and effect insurance coverage in accordance with the requirements of [APPENDIX F-2].

20.3 Developer's Cooperation with Buyer.

Developer agrees to provide such assistance and documentation as Buyer may request in connection with Claims. Buyer may make under its insurance policies purchased in connection with the Project for damage or events that occur after the Execution Date and prior to the expiration of the applicable Warranty Period.

ARTICLE 21 FORCE MAJEURE

21.1 Effect of Force Majeure.

With the exceptions of Developer's obligation under this Agreement to fund Construction Costs and Interconnection Costs and all of Developer's and Buyer's payment and indemnity obligations hereunder, neither Party shall be in default or in breach of its obligations under this Agreement or otherwise be liable to the other Party for any delay or failure in the performance of any of its obligations under this Agreement if and to the extent such delay or failure is a result of Force Majeure. With the exceptions of Developer's obligation under this Agreement to fund Construction Costs and Interconnection Costs and all of Developer's and Buyer's payment and indemnity obligations hereunder, neither Party shall be in default or in breach of its obligations under this Agreement or otherwise be liable to the other Party for any delay or failure in the performance of any of its obligations under this Agreement if and to the extent such delay or failure is a result of Force Majeure. The protections afforded under this Section 21.1 to a Party shall be of no greater scope and no longer duration, than is required by the Force Majeure. The Parties agree that no delay caused by any Force Majeure will result in a change to the Purchase Price.

21.2 Notice of Occurrence.

If either Party obtains knowledge that any event of Force Majeure has occurred which is reasonably expected to affect performance of its obligations under this Agreement, it shall promptly notify the other Party thereof stating the full particulars, including the obligations that are affected thereby, the estimated period during which performance may be delayed or prevented, and the particulars of the program to be implemented to use reasonable efforts to resume normal performance hereunder. If a "Force Majeure" event under any of the Project Company Contracts occurs with respect to or is claimed by Contractor or any other supplier or contractor, then Developer shall promptly provide notice thereof to Buyer describing: (i) the obligations of Contractor or such other supplier or contractor that are affected; (ii) the estimated period during which performance may be delayed or prevented; and (iii) the particulars of the program to be implemented by Contractor or such other supplier or contractor in order to resume normal performance thereunder.

21.3 Performance to Continue.

Upon the occurrence of any event of Force Majeure, the affected Party shall use reasonable efforts to mitigate the effects of Force Majeure, resume normal performance of this Agreement within the shortest time practicable and continue to perform its obligations under this Agreement insofar as they are not affected by the Force Majeure.

ARTICLE 22 DISPUTE RESOLUTION

22.1 Dispute Resolution.

Following written notice from either Party to the other Party setting forth a dispute arising from, relating to or otherwise in connection with or arising out of this Agreement, the Parties shall use good faith efforts to settle such dispute through negotiation between Buyer's Representative and Developer's Representative. If the dispute is not resolved by such negotiations within fifteen (15) days after delivery of such initial notice, either Party may, by delivering a subsequent written notice to the other Party, cause the matter to be referred to a meeting of appropriate senior management representatives of the Parties with the power and authority to resolve such dispute. Such meeting shall be held within thirty (30) days following the delivery of the subsequent notice. If the matter is not resolved within thirty (30) days after the first such meeting of the senior management representatives or such later date as may be mutually agreed upon by the Parties, either Party may then, subject to the terms of this Agreement, commence legal action in a court of competent jurisdiction in order to resolve the dispute.

ARTICLE 23 ASSIGNMENT

23.1 Assignability.

The rights under this Agreement shall not be assignable or transferable by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns. Nothing contained in this Agreement, express or implied, is intended to confer upon any Person, other than the Parties hereto, their permitted successors-in-interest and permitted assignees, any rights or remedies under or by reason of this Agreement unless so stated to the contrary. Unless otherwise agreed, any assignment effected in accordance with this Section 23.1 will not relieve the assigning Party of its obligations and liabilities under this Agreement.

ARTICLE 24 CONFIDENTIALITY

24.1 Confidentiality

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Project, that they consider confidential and proprietary (the "Confidential Information"). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "Disclosing Party") may make such Confidential Information available to the other (each, a "Receiving Party") subject to the provisions of this Section 24.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as permitted hereunder or required by applicable Law, subject to the restrictions set forth below.

(c) The restrictions of this Section 24.1 do not apply to:

(i) Release of this Agreement or any part or summary hereof to any Governmental Authority required for obtaining any approval or making any filing pursuant to Section 9.1(a); provided, that (a) Developer agrees to cooperate in good faith with Buyer to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by applicable Law and (b) Developer shall provide reasonable notice to Buyer, prior to disclosure (if not prevented by law), of the time and scope of the intended disclosure in order to provide Buyer an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure;

(ii) Information which is, or becomes, publicly known or generally available to the public other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party prior to the date hereof;

(iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which the Receiving Party determines is required to be disclosed pursuant to applicable Law; provided the Receiving Party shall provide reasonable notice to the Disclosing Party of the time and scope of the intended disclosure.

(d) Notwithstanding the foregoing, the Parties may provide any Confidential Information: (i) to a Transmission Provider as required for scheduling, settlement and billing, (ii) to any Person with review rights specified in other provisions of this Agreement and (iii) on a need-to-know basis to agents, trustees, employees, managers, officers, representatives, consultants, accountants, financial advisors, experts, legal counsel, other professional advisors to the Parties, their Affiliates, and prospective investors and Lenders to either Party, provided that in the case of clauses (ii) and (iii), such Persons have been advised of the confidential nature of the information and have agreed to maintain the confidentiality thereof on terms and conditions at least as restrictive as those set forth herein and the Party providing Confidential Information to any such Person shall be responsible for the compliance with this Agreement by any such Person. If Confidential Information is the subject of a subpoena from a third party, the Receiving Party may disclose such Confidential Information on the advice of its counsel in compliance with the subpoena, provided that the Disclosing Party shall provide notice thereof to the providing Party and make reasonable efforts to afford the providing Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

(e) Notwithstanding anything to the contrary contained herein, Buyer may disclose Confidential Information upon reasonable notice to Developer if Buyer reasonably determines, based upon its status as a regulated public utility, that disclosure to a Governmental Authority is necessary or appropriate in connection with any submission or application to, or response from, any such authorities regarding the Project and this Agreement, the effect thereof on Buyer's rates or investment return or similar matters, provided that Buyer shall (A) endeavor to keep Developer informed with respect to such disclosures, (B) file a written request in the form of a motion for

protective order or for confidential treatment or other comparable written request that any Confidential Information be afforded confidential treatment and otherwise endeavor to obtain confidential treatment of Confidential Information, and (C) notify Developer promptly if it receives notice of any challenge to the request that such Confidential Information be afforded confidential treatment.

(f) Neither Party shall issue any press or publicity release, other than information that is required to be distributed or disseminated pursuant to applicable Law (provided that the Disclosing Party has given notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 24.1(c)(v) concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project, as are necessary in order to fulfill such Party's obligations under this Agreement.

(g) The obligations of the Parties under this Section 24.1 shall remain in full force and effect for two (2) years following the expiration or termination of this Agreement.

ARTICLE 25

MISCELLANEOUS PROVISIONS²⁴

25.1 Notices, Consents, and Approvals.

Contact information for notices, requests, demands and other communications required or permitted hereunder is as follows:

(a) if to Developer, to:

[]

[]

[]

Attention: []

Telephone: []

Email: []

with a copy to:

[]

[]

[]

Attention: []

Telephone: []

Email: []

or to such other person(s) or address(es) as Developer shall provide to Buyer from time to time in accordance with this or to such other person(s) or address(es) as Developer shall provide to Buyer from time to time in accordance with this Section 25.1;

²⁴ **Note to Draft:** PSE reserves the right to include additional provisions relating to cyber security.

(b) if to Buyer, to:

Puget Sound Energy, Inc.

[]

[]

Attention: Anthony O'Rourke

Telephone: []

Email: Anthony.ORourke@pse.com

with copies to:

Attention: Colin Crowley

Telephone: []

Email: colin.crowley@pse.com

and:

[]

Attention: Legal Department

and:

Baker Botts LLP

30 Rockefeller Plaza

New York, NY 10112

Attention: Michael Didriksen

Telephone: 212-408-2507

Email: michael.didriksen@bakerbotts.com

or to such other person(s) or address(es) as Buyer shall provide to Developer from time to time in accordance with this or to such other person(s) or address(es) as Buyer shall provide to Developer from time to time in accordance with this Section 25.1.

(c) All notices (including acceptances, consents, approvals, agreements, deliveries of information, designations), requests, demands, and other communications required or permitted hereunder shall be in writing, properly addressed as provided in paragraphs (a) and (b) above, and given by (i) hand delivery, (ii) a national overnight courier service, (iii) confirmed e-mail transmission, or (iv) certified or registered mail, return receipt requested, and postage prepaid. Any such notice, request, demand, or other communication shall be deemed to have been duly given as of the date delivered if by hand delivery, national overnight courier service, or confirmed e-mail transmission. Any notice shall be deemed delivered five (5) days after mailing if by certified or registered mail.

25.2 Release.

Effective as of the Closing, each of Developer and Buyer, for itself and each of its respective Affiliates (including, in respect of Developer, the Project Company prior to the Closing and, in respect of Buyer, the Project Company after the Closing) and its and their respective former, current or future directors, officers, employees, general or limited partners, managers, members, direct or indirect equityholders, controlling persons, Affiliates, attorneys, assignees, agents, representatives or representatives of any of the foregoing, or any former, current or future estates, heirs, executors,

administrators, trustees, successors or assigns of any of the foregoing (each, a “Releasor”), hereby irrevocably, knowingly and voluntarily releases, discharges and forever waives and relinquishes all claims, demands, obligations, Liabilities, defenses, affirmative defenses, setoffs, counterclaims, actions and causes of action of whatever kind or nature, whether known or unknown, which any Releasor has, may have, or might have or may assert now or in the future, against the other Party or any of its Affiliates or any of its or their respective former, current and future directors, officers, employees, general and limited partners, managers, members, direct and indirect equityholders, controlling persons, affiliates, attorneys, assignees, agents, representatives and representatives of any of the foregoing, and any and all former, current and future estates, heirs, executors, administrators, trustees, successors and assigns of any of the foregoing (each, a “Releasee”) arising out of, based upon or resulting from any Contract, transaction, event, circumstance, action, failure to act or occurrence of any sort or type, whether known or unknown, and which occurred, existed or was taken or permitted at or prior to the Closing to the extent relating to the Project Company, the ownership of the Membership Interests, the business or the operation, management, use or control of the businesses of the Project Company or the transactions contemplated by this Agreement and the other Transaction Documents; provided, however, that nothing contained in this Section 25.2 shall release, waive, discharge, relinquish or otherwise affect the rights or obligations of any Person under this Agreement or any other Transaction Document or any rights or obligations resulting from fraud, gross negligence or willful misconduct. Each Releasee to whom this Section 25.2 applies shall be a third party beneficiary of this Section 25.2.

25.3 Entire Agreement.

This Agreement supersedes all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

25.4 Amendment; Waiver.

No amendment or other modification of any provision of this Agreement shall be valid or binding unless it is signed by each of the Parties. No waiver of any provision of this Agreement shall be valid or binding unless it signed by the Party waiving compliance with such provision. No delay on the part of either Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other such right, power, or privilege. No waiver of any breach, term, or condition of this Agreement by any Party shall constitute a subsequent waiver of the same or any other breach, term, or condition of this Agreement.

25.5 Successors and Assigns.

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, no consent shall be required for any assignment of this Agreement by Developer to any debt Lenders as collateral security for obligations under the construction financing documents entered into with such Lenders;

(b) In accordance with Section 25.5(b)(ii), Developer shall be permitted to assign this Agreement to a debt Lender as collateral for any construction financing or refinancing of the Project. Buyer will, at Developer’s expense, execute customary consents to assignment of this Agreement in favor of any debt Lenders for collateral purposes as may be reasonably required by such Lenders,

giving such Lenders “step-in” cure rights with respect to Events of Default, notices of such Events of Default, and such other rights as are customary in connection with the construction financing of projects similar to the Project. Notwithstanding the foregoing, (i) Buyer will not be obligated to agree to any provisions that would adversely affect the rights or increase the duties of Buyer under this Agreement in any material respect, including the extension of any cure periods or additional remedies for financing parties and (ii) Developer shall be responsible, at Buyer’s request, for Buyer’s reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including attorneys’ fees.

(c) Any transfer by either Party not expressly permitted under this Section 25.5 shall be null and void *ab initio* and of no force or effect and further shall be deemed to be an Event of Default hereunder.

25.6 Change of Control of Developer.

(a) Developer must request Buyer’s consent to a Change of Control (which consent will not be unreasonably withheld) with at least thirty (30) days’ prior written notice of such Change of Control (“Change of Control Request”). The cumulative number of Persons that are the subject of all Change of Control Requests that Developer submits to Buyer within any thirty (30) day period will be no greater than three (3). Developer will only submit a Change of Control Request to Buyer with respect to Persons (i) for whom Developer has received Buyer’s consent with respect to confidentiality in accordance with Section 24.1, and (ii) with whom Developer (or its upstream Affiliate, as applicable) has executed an exclusive agreement or term sheet governing such Change of Control.

(b) Buyer will respond with written notice to each Change of Control Request no later than fifteen (15) Business Days after Buyer’s receipt of such Change of Control Request. Any consent to a Change of Control shall remain valid if within ninety (90) days after such consent is granted, Developer enters into a binding, definitive agreement intended to effect such Change of Control either upon entering such agreement or at a future date on the terms described in the Change of Control Request; provided, however, that nothing in this Section 25.6(a) will require Developer to provide Buyer with a Change of Control Request prior to entering into a term sheet with any Person.

(c) If Buyer consents to such Change of Control, Developer will notify Buyer of the effective date of such Change of Control no later than five (5) days after such Change of Control.

(d) For the avoidance of doubt, Buyer may withhold its consent on any reasonable basis, including Buyer’s determination that, following the Change of Control: (A) the Person(s) with the right and authority to direct, or cause the direction of, the management and policies of the Developer and/or the Project would lack the technical and/or financial capability necessary to assure that Developer is able to perform its obligations under this Agreement; (B) Buyer and/or Buyer’s Affiliates would be exposed to financial risk that Buyer finds unacceptable; and/or (C) would cause Buyer and/or Buyer’s Affiliates to violate any law applicable to Buyer and/or Buyer’s Affiliates, including anti-bribery laws.

25.7 Financing Liens.

(a) Developer, without approval of Buyer, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the construction of the

Project, and [Developer's Interconnection Facilities]. For sake of clarity, the foregoing shall not limit Developer's obligations as regards the removal of liens as a condition to Closing in Section 3.6(h).

(b) Within ten (10) Business Days of making such encumbrance, Developer shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender (or their collateral agent) to which Developer's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed.

(c) After giving Buyer such initial notice, Developer shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

25.8 Third Party Beneficiaries.

Except as set forth in ARTICLE 20 and in Sections 25.5, 25.6 and 25.16, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

25.9 Severability.

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect, and that provision shall be severed from the remainder of the Agreement, and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible, or otherwise modified in such fashion as to preserve, to the maximum extent possible, the original intent of the Parties, and the Agreement, as so modified, shall continue to be in full force and effect; provided that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable Law and the intent of the Parties.

25.10 Publicity.

Except as required by applicable Law, the Parties agree that neither Party will issue or release for external publication any press release, article, advertising, or other publicity matter in any form (including print, electronic, or interview) relating to the Project, or to this Agreement without first consulting with and obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that a press release or other public announcement, regulatory filing, statement, or comment made without such consent shall not be in violation of this Section 25.10 if it is made in order for the disclosing Party or any of its Affiliates to comply with applicable Laws or applicable stock exchange rules and in the reasonable judgment of the Party making such release or announcement, and prior review and joint approval by the Parties, despite reasonable efforts to obtain the same, would prevent dissemination of such release or announcement in a sufficiently timely fashion to comply with such applicable Laws or rules.

25.11 No Agency.

This Agreement is not intended, and shall not 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. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

25.12 Further Assurances.

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 25.12.

25.13 Good Faith.

The Parties shall act in accordance with principles of good faith and fair dealing in the performance of this Agreement.

25.14 Separation of Functions.

Developer hereby acknowledges that (i) Buyer is acting solely in its capacity as a local distribution company, (ii) the activities of Buyer as Transmission Provider are outside the scope of this Agreement, and (iii) Buyer shall not have any liabilities or obligations hereunder arising out of any actions or inactions of Buyer acting in its role as Transmission Provider.

25.15 Waiver of Certain Damages; Certain Acknowledgments.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT (EXCEPT TO THE EXTENT INDEMNIFICATION PAYMENTS ARE MADE PURSUANT TO SECTION 19.1 AS A RESULT OF AN INDEMNIFIED PERSON'S OBLIGATION TO PAY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES TO A THIRD PARTY (EXCLUDING EITHER PARTY'S AFFILIATES, LENDERS, OFFICERS, DIRECTORS, SHAREHOLDERS OR MEMBERS) AS A RESULT OF ACTIONS INCLUDED IN THE PROTECTION AFFORDED BY THE INDEMNIFICATION SET FORTH IN SECTION 19.1), NEITHER BUYER NOR DEVELOPER (NOR ANY OF THEIR AFFILIATES, LENDERS, CONTRACTORS, CONSULTANTS, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR EMPLOYEES) SHALL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES UNDER, ARISING OUT OF, DUE TO, OR IN CONNECTION WITH ITS PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY OF ITS OBLIGATIONS HEREIN, WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, WARRANTY, INDEMNITY OR OTHERWISE; PROVIDED, THAT CLAIMS OR LIABILITIES DUE TO BREACH OF REPRESENTATIONS AND WARRANTIES IN THE QUARTERLY PREVAILING WAGE AND APPRENTICESHIP CERTIFICATES OR IN SECTION 6.17 THAT ARE ATTRIBUTABLE TO, RESULTING FROM OR ARISING IN CONNECTION WITH THE LOSS, DISALLOWANCE, REDUCTION OR RECAPTURE OF, OR INABILITY TO CLAIM, TAX BENEFITS SHALL NOT CONSTITUTE SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES FOR PURPOSES OF THIS AGREEMENT. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED TO BE THE EXCLUSIVE REMEDY THEREFOR, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. THE PARTIES ALSO AGREE THAT IN ALL CASES WHERE THIS AGREEMENT PROVIDES FOR LIQUIDATED DAMAGES, THE ACTUAL DAMAGES WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OBTAINING AN ADEQUATE REMEDY WOULD BE UNREASONABLY TIME CONSUMING AND EXPENSIVE, AND THEREFORE SUCH LIQUIDATED DAMAGES ARE A REASONABLE APPROXIMATION OF THE HARM AND NOT A PENALTY, AND IN NO EVENT SHALL SUCH LIQUIDATED DAMAGES BE CONSIDERED SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

25.16 Survival.

The provisions of ARTICLE 17 (LIQUIDATED DAMAGES), ARTICLE 18 (LIMITATION OF LIABILITY), ARTICLE 22 (DISPUTE RESOLUTION), ARTICLE 24 (CONFIDENTIALITY), Section 4.1 (Early

Termination), ARTICLE 8 (CREDIT SUPPORT), Section 10.3 (Opportunities for Other Contractors), Section 10.8 (Records and Accounts), this Section 25.17 (Survival), Section 25.19 (Governing Law), Section 25.21 (Waiver of Jury Trial.) of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely; provided, that the foregoing enumeration shall not be interpreted to bar survival of any other provision hereof which by its express terms or by operation of Law would otherwise be deemed to survive.

25.17 Governing Law.

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington without regard its conflicts of laws provisions.

25.18 Consent to Jurisdiction.

(a) Each of the Parties hereto hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement shall be brought exclusively in any of the courts of the United States of America located in the United States District Court for the Western District of Washington, having subject matter jurisdiction, or if such court lacks subject matter jurisdiction, then the state district court for King County, Washington.

(b) By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby:

(i) Irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents;

(ii) Irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceedings brought in any such court has been brought in any inconvenient forum;

(iii) Agrees that service of process in any such action may be effected by mailing a copy thereof by certified mail, return receipt requested, postage prepaid, to such Party its address(es) set forth in Section 25.1, or at such other address of which the other Parties hereto shall have been notified; and

(iv) Agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

25.19 Waiver of Trial by Jury.

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

25.20 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other similar transmission method, and any counterpart so delivered shall be deemed to have been duly and validly executed and delivered and be valid and effective for all purposes.

25.21 Captions.

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

25.22 Offset.

Notwithstanding any other provision of this Agreement to the contrary, any and all amounts owing and payable by Buyer or Developer to the other hereunder for the Work or any indemnity pursuant to ARTICLE 19, shall be subject to offset and reduction in an amount equal to any amounts that may be owing to the applicable Party at such time. Further, for the avoidance of doubt, with respect to any provision of this Agreement that allows Buyer to offset, setoff or draw against a bond or other credit support any amount then owed to Developer, Buyer shall have the express right to include in the amount offset, set-off or drawn under a bond or other credit support all of the reasonable costs and expenses it incurs in connection with enforcing such provision (including attorneys' and other consultants' fees) but only (unless otherwise agreed as party of any settlement) in the event that, in enforcing such rights, Buyer shall be the prevailing Party in a final, non-appealable judgment of a court of competent jurisdiction. If any amount offset by a Party hereunder is subsequently determined to be due the other Party hereunder, such amount shall be paid to the other Party within five (5) Business Days after such determination along with interest at the Late Payment Rate from the date originally due until the date paid.

25.23 Specific Performance.

The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each Party shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to specifically enforce the terms and provisions of this Agreement and any other agreement or instrument executed in connection herewith or contemplated hereby, and each Party agrees that specific performance is the remedy intended by the Parties for any such breaches or threatened breaches. Each Party agrees that it shall not object to, or take any position inconsistent with respect to, whether in a court of law or otherwise, the appropriateness of specific performance as a remedy for breaching this Agreement. The Parties further agree that (a) by seeking the remedies provided for in this Section 25.25, neither Party shall in any respect waive its right to seek any other form of relief that may be available to such Party under this Agreement, including monetary damages, and (b) the commencement of any action pursuant to this Section 25.25 or anything contained in this Section 25.25 shall not restrict or limit any other remedies under this Agreement that may be available to such Party then or thereafter.

25.24 Recitals.

The Recitals in this Agreement are incorporated into this Agreement by reference.

25.25 Supplier Code of Conduct.

Developer shall cause Contractor to comply with Buyer's "Supplier Code of Conduct", as revised from time to time, and available at [_____].

25.26 Prohibited Technology.

Pursuant to Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and Federal Acquisition Regulation (FAR) 52.204-25, Developer agrees, represents, and warrants that Developer shall not supply or deliver to Buyer any "covered telecommunications equipment or services" (as defined in FAR 52.204-25) as a substantial or essential component of any system or critical technology of any system. As defined in FAR 52.204-25(a), "covered telecommunications equipment or services" includes equipment, systems, products, or services made or provided by any of the following companies, or any subsidiary or affiliate thereof (including companies with the same principal word in the name, e.g., "Huawei" or "Hytera"): Huawei Technologies Company; ZTE Corporation; Hytera Communications Corporation; Hangzhou Hikvision Digital Technology Company; or Dahua Technology Company. "Covered telecommunications equipment or services" may include, but are not limited to, video/monitoring surveillance equipment/services, public switching and transmission equipment, private switches, cables, local area networks, modems, mobile phones, wireless devices, landline telephones, laptops, desktop computers, answering machines, teleprinters, fax machines, and routers. "Covered telecommunications equipment or services" do not include telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that the equipment transmits or handles.

To the extent that the equipment, systems, products, or services to be provided by Developer under this Agreement may be procured by Buyer in support of or to satisfy Buyer's obligations under agreements with a federal governmental entity, Developer further agrees that FAR 52.204-25, except for paragraph (b)(2) thereof, shall be incorporated by reference into this Agreement and is binding on Developer, and that Developer does not use any equipment, system, products or service that uses covered telecommunications equipment or services and will not supply any covered telecommunications equipment or services to Buyer. Developer further agrees that, if it identifies covered telecommunications equipment or services used as a substantial or essential component of any system or as critical technology as part of any system during contract performance, or Developer is notified of such by a subcontractor at any tier or any other source, Developer shall immediately notify Buyer and reasonably cooperate with any requests by Buyer for further information

25.27 [Standard of Conduct for Granting Consents.

(a) Unless explicitly stated otherwise in this Agreement, whenever the Parties or their representatives are required to exercise their discretion: (i) to make a decision, (ii) to give consent or approval, (iii) to express satisfaction or approval, (iv) to determine value, or (v) otherwise to take action which may affect their respective rights and obligations hereunder, the exercise of such discretion shall be made in a reasonable manner and in good faith.

(b) If one Party is required to obtain the approval of, or consent from, the other Party pursuant to the terms of this Agreement, the requesting Party shall request such approval or consent

from the other Party in writing by delivering written notice to all of the individuals specified on Schedule 25.27(b). Upon receipt of such a request for such approval or consent from the Requesting Party, the other Party shall, in its reasonable discretion (which shall not be unreasonably withheld, conditioned, or delayed), respond (i) granting such approval or consent, (ii) denying such approval or consent or (iii) requesting supporting material or information, in the time expressly specified in this Agreement or when no time is referenced, within a reasonable time not to exceed ten (10) Business Days. If Buyer fails to timely respond to any such request within such time, (A) such failure shall be considered a Buyer-Caused Delay for purposes of this Agreement, and (B) if such failure to timely respond (x) would reasonably be expected to either (1) adversely impact the Project Schedule or (2) result in an EPC Change Order, and (y) continues for an additional period of five (5) Business Days, then, in addition to being considered a Buyer-Caused Delay, Buyer shall be deemed to have granted such approval or consent. If Seller fails to timely respond to any such request within such time, Seller shall be deemed to have granted such approval or consent.]²⁵

(Signature page follows)

²⁵ **Note to Draft:** PSE reserves right of review for this section.

IN WITNESS WHEREOF, each of the authorized representatives of the Parties have executed this Agreement as of the first date set forth above.

DEVELOPER:

[_____]

By: _____

Name: _____

Title: _____

BUYER:

PUGET SOUND ENERGY, INC.

By: _____

Name: _____

Title: _____