

(h) NRS 701A.365(1)(d)(1) – The construction of the Facility will employ at least 150 full-time employees during the second quarter of construction. 325MK 8ME, LLC anticipates that at least 50% of those employees will be Nevada residents, thus meeting the statutory standard.

(i) NRS 701A.365(1)(d)(2) – The capital investment in Nevada for the Facility is estimated to be at least \$339,000,000 thus exceeding the statutory standard.

(j) NRS 701A.365(1)(d)(3) – The average hourly wage paid to the operational employees of the Facility will be approximately \$26.58, which is at least 110% of the average hourly wage set by DETR of \$24.16, thus meeting the statutory standard.

(k) NRS 701A.365(1)(d)(4) – The average hourly wage paid to the construction employees on the Facility will be approximately \$42.28, which is at least 175% of the average hourly wage set by DETR of \$24.16, thus meeting the statutory standard.

(l) NRS 701A.365(1)(d)(4)(I) and (II) – The health insurance provided to the construction employees on the Facility was represented to allow for the coverage of the dependents of the employees and will meet or exceed the standards established by the Director, thus meeting the statutory standard.

(m) NRS 701A.365(1)(f) – The benefits that will result to this State from the employment by the Facility of the residents of this State and from capital investments by the Facility in this State exceeds the loss of tax revenue that will result from the abatement, thus meeting the statutory standard.

(n) NRS 701A.370(1)(a)(3) – The abatement granted by this Order will not apply during any period in which the Facility is receiving another abatement or exemption from property taxes imposed pursuant to chapter 361 of NRS, other than any partial abatement provided pursuant to NRS 361.4722, thus meeting the statutory standard.

(o) NRS 701A.370(1)(b)(1)(III) – The abatement granted by this Order will not apply during any period in which the Facility is receiving another abatement or exemption from local sales and use taxes, thus meeting the requirement of the statute.

ORDER

Based upon the foregoing, the Director orders that 325MK 8ME, LLC Application Filing No. 20-0616SPV related to the construction and operation of the Facility is hereby **GRANTED**. 325MK 8ME, LLC and the Director may execute an Abatement Agreement as soon as practicable that will satisfy the requisites of NRS 701A.300 through NRS 701A.390. 325MK 8ME, LLC sales and use tax abatement will terminate three years from the effective date of the Abatement Agreement.

SIGNED this _4th__ day of _November_, 2020.



— DAVID BOBZIEN
Director
Governor's Office of Energy

Appendix H

Decommissioning Plan

CONCEPTUAL DECOMMISSIONING PLAN

EAGLE SHADOW MOUNTIAN SOLAR PROJECT

CLARK COUNTY, NEVADA

June 2019

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FIGURES

- Figure 1: Project Location
Figure 2: Project Area

Acronyms and Abbreviations

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
CSP	Concentrating Solar Power
EPA	Environmental Protection Agency
ESA	Environmental Site Assessment
NEPA	National Environmental Policy Act
O&M	Operations and Maintenance
Project	Eagle Shadow Mountain Solar Project
PV	Photovoltaic
PPA	Power Purchase Agreement
RCRA	Resource Conservation and Recovery Act
Reservation	Moapa River Indian Reservation
TSCA	Toxic Substances Control Act

1 Introduction

1.1 Purpose of the Decommissioning Plan

The purpose of this Decommissioning Plan is to establish the conceptual methodologies that would be employed for decommissioning activities associated with the permanent closure of the facilities at the Eagle Shadow Mountain Solar Project (Project or facility). The actions implemented during the facility closure would be determined based on the expected future use of the site. Therefore, a more detailed decommissioning plan would be developed in advance of the start of decommissioning activities.

The Project is expected to operate at a minimum for the life of the term of the Power Purchase Agreement with NV Energy (30 years). Because much of the needed electrical infrastructure will have been developed, it is possible that the solar field would continue to be upgraded and used to generate solar energy even beyond the term of the initial lease and energy purchase agreements, remaining in solar energy production for the foreseeable future. It is also possible that the Tribe could re-purpose the Project site at the termination of solar project. Certain facility components such as the access roads, electrical transmission lines, Operations and Maintenance (O&M) building, and others could be used to support other future uses on this site.

For purposes of developing this plan, it is assumed that if and when the Project is decommissioned, all Project structures and electrical equipment would be removed from the solar field and associated rights-of way (ROWS) and the disturbed areas would be reclaimed in accordance with the Restoration Plan.

This conceptual decommissioning plan addresses the following:

- Project Description
- Regulatory Criteria
- Decommissioning Activities
 - Pre-Decommissioning
 - Removal of Facilities
 - Hazardous Waste Management
 - Debris Management, Disposal, and Recycling
 - Post-Demolition Site Stabilization
- Project Decommissioning Costs and Bonding

As mentioned above, because this document addresses Project actions that would occur well in the future, it will be updated and finalized in the months prior to the scheduled decommissioning. This will ensure the final plan addresses the proposed future land use of the site and the applicable rules and regulations in place at that time.

2 Project Description

2.1 Project Area

The Proposed Project would be located approximately 30 miles northeast of Las Vegas in Clark County, Nevada. The solar project would be located on up to 2,200 acres of tribal trust land, west of I-15 and east of U.S. Highway 93, in Sections 1, 9, 10, 11, 14, 15, 16, 21 and 22 of Township 16 South, Range 64 East. These lands are currently vacant except for roads, pipelines, a tribal aggregate operation, and a well.

The portion of the proposed 12.5-mile gen-tie line located on Tribal lands within the designated utility corridor managed by the BLM occur within Sections 12, 13, and 14 in Township 16 South, Range 64 East; Sections 5, 6, and 7 in Township 16 South, Range 65 East; and Sections 12, 13, 14, 22, 23, 27, 28, 32, and 33 in Township 15 South, Range 65 East. The short segment on Federal lands managed by the BLM would be within Section 7 in Township 16 South, Range 66 East and the portion on private lands owned by NVE adjacent to the Reid-Gardner Substation would be within Sections 5 and 6 in Township 16 South, Range 66 East. All of these lands are adjacent to multiple existing linear electric transmission and pipeline utilities and private lands (owned by NV Energy) adjacent to the Reid-Gardner Substation.

2.2 Proposed Project

The following describes the major features of the proposed Project. For a comprehensive description of the proposed Project, refer to the associated Environmental Impact Statement for the Eagle Shadow Mountain Solar Project for the Project design details.

The Project will consist of an up to 300 megawatt alternating current (MWac) solar energy generating facility using photovoltaic (PV) technology and associated infrastructure. Project components include on-site facilities, off-site facilities, and temporary facilities needed to construct the Project. The solar site would be located entirely on Tribal lands. Major onsite facilities include the solar field comprised of multiple blocks of PV solar panels mounted on single-axis tracking systems, associated inverter and transformer equipment, an energy storage system (ESS), a project substation, and operation and maintenance (O&M) facilities.

The offsite facilities would include an approximately 12.5-mile dual-circuit 230kV gen-tie line located on Tribal lands, BLM-administered lands, and private lands owned by NV Energy. Most of the gen-tie would be within a Federally-designated utility corridor on Tribal lands. This line would require a right-of-way (ROW) width of 125 to 200 feet. The Applicant would construct the gen-tie from the Project substation to a structure located on BLM-administered land in the SW¼ of the NE¼ of Section 7 referred to as the Point of Change of Ownership (POCO). From the POCO structure, the remaining portion of the gen-tie would be constructed by NVE to the Reid Gardner Substation. Additional offsite facilities include an existing road that would provide access to the Project and electric distribution and communication lines.

Temporary facilities that would be removed at the end of construction include laydown and construction areas and water storage tanks also located on Tribal lands.

Power produced by the Project would be conveyed to the regional transmission system via the gen-tie interconnection to NVE's existing 230kV Reid-Gardner Substation.

Access Roads

The Project would require vehicular access for construction, operation, and maintenance. The access roads would be utilized for delivery of all Project components, and would be used by workers traveling to and from the site for construction. Main access to the ESMSP site for construction and through operations and decommissioning would be provided via existing roads. Access to this portion of the Reservation would be via I-15, US Highway 93, and North Las Vegas Boulevard to existing improved roads on the Reservation and would not be reclaimed.

Within the solar field, access ways would be built to provide vehicle access to the solar equipment (PV modules, inverters, transformers) for O&M activities. These access ways would be located around the arrays and between the panel rows in the solar field. The existing soil surface of all interior access ways would be graded. In addition to grading, interior access ways that lead to inverter stations would be compacted using onsite materials. The access roads within the solar facility would be reclaimed during decommissioning.

Most of the structures along the proposed gen-tie line would be accessed via new spur roads constructed from existing utility access roads. Where the proposed line does not parallel existing lines, a new road would be developed within the ROW to facilitate access to the gen-tie transmission structures. New gen-ties access roads and spur roads would typically be 12 feet wide and bladed and would be compacted to ensure stability if needed. Access roads parallel to the gen-tie alignment and spur roads would be left in place but would not be maintained following construction. New and existing gen-tie access roads would not be reclaimed during decommissioning.

3 Regulatory Criteria

During the decommissioning process, all activities will be conducted in compliance with all applicable Federal and Tribal regulations in place at the time. Consultation with the Tribe, BIA, BLM, and any other involved entities would be conducted to ensure that all Federal and Tribal requirements are addressed.

The primary guidance documents for decommissioning will be the Final Decommissioning Plan (prepared just in advance of project closure) and the Restoration Plan.

Federal requirements involving hazardous wastes and toxic substances will also be followed during decommissioning activities. Among these are the Toxic Substances Control Act (TSCA) (15 U.S.C. §2601) that requires reporting, record-keeping and testing requirements and restrictions relating to the use and disposal of chemical substances and/or mixtures. TSCA also addresses the production, importation, use and disposal of specific chemicals (EPA 2016). The Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901) gives the EPA the authority to control hazardous waste from its generation until its disposal, including transportation, treatment, and storage (EPA 2011).

Coordination with the Tribe and agencies throughout the life of the Project, including decommissioning, is critical so that applicable regulations are not violated and the public and the environment are not impacted by the Project.

4 Project Decommissioning

The procedures described for decommissioning are designed to promote public health and safety, environmental protection and compliance with applicable regulations. It is assumed that decommissioning will begin approximately 30 or more years after Project operation is initiated. The Project decommissioning plan may incorporate the sale of some of the facility components via the used equipment market and recycling of components. Decommissioning will be conducted in accordance with a Final Decommissioning Plan that will be developed in the months prior to decommissioning being initiated.

This conceptual decommissioning plan assumes that all equipment and facilities within and associated with the solar field will be removed. The transmission lines and internal solar facility access roads would also be restored to as close to its original state as practicable. A compliance inspection would be performed by BLM on the Project's BLM lands.

4.1 Pre-Decommissioning Activities

Pre-decommissioning activities will be conducted to prepare the Project for demolition. This would include assessing the existing site conditions and development of the Final Decommissioning Plan and schedule as described above.

An Environmental Site Assessment (ESA) will be conducted before any decommissioning activities occur. The ESA will document the existing conditions of the solar field, including the location and presence of hazardous materials on the site. The results of the ESA will be used to define any remediation or cleanup methodologies that could be required and incorporated into the Final Decommissioning Plan. This documentation would ensure that areas containing hazardous materials can be decommissioned appropriately.

Other pre-decommissioning activities would include removing hazardous materials from the site including residues that occur in equipment. All operational liquids and chemicals are expected to be removed and disposed of as discussed in Section 4.4. Hazardous material and petroleum containers, , and other similar structures shall be rinsed clean, when feasible, and the waste liquid collected for off-site disposal.

Locations for decommissioned structures, non-hazardous waste, and debris will be designated on the Final Decommissioning Plan to facilitate the decommissioning process and off-site removal.

4.2 Removal of Facilities

Site decommissioning and equipment removal may take a year or more. Therefore, access roads, fencing, electrical power, and raw/sanitary water facilities will temporarily remain in place for use by the

decommissioning and restoration workers until no longer needed. Therefore, these components would be the last to be removed prior to site rehabilitation.

Solar Field Above- and Below-Ground Facilities

Structures that need to be dismantled during decommissioning include the onsite substation, energy storage system, onsite O&M area, perimeter fence, solar field, and transformers and inverters. These structures will be dismantled and moved to designated areas for either recycling or disposal at an approved landfill.

Above-ground structures will be removed through mechanical or other approved methods. Below-ground structures will be removed or, upon agency approval, may remain in place to minimize soil disturbance. Below-ground facilities/utilities that potentially may be removed include embedded foundations (if present), electrical lines and conduits, and concrete slabs.

While holding or evaporation ponds are not anticipated as part of the proposed project, any evaporation, stormwater holding, or construction/decommissioning water holding ponds will be closed by removing any non-biodegradable materials (e.g., high density polyethylene (HDPE) liners), along with any hard surface/non-draining layers that may have been used as base material. The pond(s) will then be filled with weed- and other contaminant free-fill and brought to grade level.

Gen-Tie Transmission Lines

If the gen-tie transmission lines will not continue to be used by the Tribe for another purpose at the time of Project decommissioning, the lines will be removed. Decommissioning of the gen-tie will consist of removal of all structures associated with the construction of the transmission line(s) to include, but not limited to overhead conductors and the removal of poles. All steel will be recycled and the foundations will be removed to a depth of at least 2 feet below the ground surface, unless the Tribe or BLM does not require removal of the foundations. Aluminum from overhead conductors will be recycled.

Roads

Access and on-site roads will remain in place to accomplish decommissioning at the end of the facility's life and would be one of the last Project components to be removed. If any on-site roads developed in the solar facility are not needed for other future uses by the Tribe, any aggregate and/or other base material would be removed and recycled or transported to an appropriate disposal site (where applicable).

After the road materials are removed, the roads will be restored to approximate preconstruction conditions in accordance with the Restoration Plan.

4.3 Debris Management, Disposal, and Recycling

Each type of removed material or demolition debris will be placed in designated locations within the solar field. Each stockpile will be transported off-site to either a used equipment market, off-site recycling center, or approved landfill depending on the material type. Debris will be broken down into manageable sizes so that transportation is simplified.

4.4 Hazardous Waste Management

All disposal and transportation of hazardous waste will be conducted under compliance with RCRA (42 U.S.C. §6901), and TSCA (15 U.S.C. §2601), and other regulations as needed. In areas where no record of hazardous waste exposure occurred, a visual inspection would be conducted as part of the post-operational ESA described earlier. If a concern is identified, further evaluation of the area shall occur and the area or structure will be treated accordingly. A licensed state waste contractor would be used to ensure that all required laws and regulations have been met and to address any remaining requirements needed to successfully close the Project.

4.5 Post-Demolition Site Stabilization

Since minimal grading is being proposed during project construction, and because vegetation cover will be managed during operation of the proposed project, disturbed areas will be restored to promote pre-project drainage patterns, with the goal of reducing the potential for erosion. These activities will occur following the removal of project equipment in a given area. Once the site is stabilized, restoration activities required to return the disturbed areas to a pre-construction function will be conducted in accordance with the plans prepared as part of the Project. These plans include:

- Site Restoration Plan
- Integrated Weed Management Plan

The objectives of these plans include the following:

- Reduce potential for erosion,
- Promote habitat reestablishment
- Implement the weed management program that minimizes the need for non-native species eradication.

5 Project Decommissioning Costs and Bonding

Prior to the issuance of full notice to proceed, the Applicant will provide performance and reclamation bonding in an amount sufficient to ensure the implementation of the approved Decommissioning Plan for restoration and performance.

The bond instrument will be based on a decommissioning cost estimate provided by the Applicant and based on the final design of the Project. This estimate will consider any Project components that are expected to be left in place at the request of and for the benefit to the Tribe (e.g., gen-tie lines, access road). The decommissioning, performance and reclamation estimate will also include the residual value of any salvageable or recyclable property, as well as the then-current cost of decommissioning.

6 References

United States Environmental Protection Agency (EPA). 2011. Summary of the Resource Conservation and Recovery Act. <https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act>.

United States Environmental Protection Agency (EPA). 2016. Summary of the Toxic Substances Control Act. <https://www.epa.gov/laws-regulations/summary-toxic-substances-control-act>.

Non-Tribal Land



Non-Tribal Land



Non-Tribal Land



Non-Tribal Land



Non-Tribal Land



Non-Tribal Land



Non-Tribal Land



Non-Tribal Land



Tribal Land



Tribal Land



Tribal Land



Tribal Land



Tribal Land



Tribal Land



Tribal Land



**LONG-TERM RENEWABLE
POWER PURCHASE AGREEMENT**

BETWEEN

NEVADA POWER COMPANY D/B/A NV ENERGY

AND

325MK 8ME LLC

**Eagle Shadow Mountain Solar Farm
Clark County, Nevada**

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LONG-TERM RENEWABLE POWER PURCHASE AGREEMENT

This Long-Term Renewable Power Purchase Agreement (this “Agreement”) is made and entered into as of May 14, 2018 (the “Effective Date”) by and between **NEVADA POWER COMPANY**, a Nevada corporation, d/b/a NV Energy acting in its merchant function capacity (“Buyer”), and **325MK 8ME LLC**, a Delaware limited liability company (“Supplier”). Buyer and Supplier are sometimes referred to individually as a “Party” and collectively as the “Parties.”

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

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

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

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

1. DEFINITIONS

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

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

subsidiaries, and if Berkshire Hathaway Energy Company ceases to in fact be an Affiliate of Buyer, then Buyer shall have no Affiliates.

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

Authorities listed on Exhibit 9, and such others as are deemed by Buyer to be necessary or desirable from time to time.

- 1.19 “CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal Governmental Authority given jurisdiction over a program involving transferability of Renewable Energy Benefits or any part thereof.
- 1.20 “Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax incentives of any kind existing now or in the future associated with the construction, ownership or operation of the Facility.
- 1.21 “Certified Nameplate Capacity Rating” is defined in Section 8.3.2.2.
- 1.22 “Commercial Operation” means that: (a) the Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System; (b) Supplier shall have received or obtained all Required Facility Documents; and (c) which occurs when all of the requirements applicable prior to Commercial Operation set forth in Sections 8.1, 8.3 and 17.2 and Exhibits 6 and 7 (i) have occurred, and (ii) remain simultaneously true and accurate: (A) as of the date and time Supplier gives Buyer notice that Commercial Operation has occurred; and (B) for the period Buyer has to review Supplier’s notice of Commercial Operation pursuant to Section 8.2.1.
- 1.23 “Commercial Operation Date” means the date on which Commercial Operation occurs.
- 1.24 “Commercial Operation Deadline” means the date specified in Exhibit 6 by which the Commercial Operation Date must occur, as such date may be extended if and to the extent Supplier fails to achieve the Commercial Operation Date as a result of Force Majeure.
- 1.25 “Compliance Cost Cap” is defined in Section 3.5.
- 1.26 “Construction Contract” means one or more construction and equipment supply agreements, in each case, between a Construction Contractor and Supplier (or one of its Affiliates), pursuant to which, in the aggregate, the Facility will be designed, engineered, constructed, tested and commissioned.
- 1.27 “Construction Contractor” with respect to a Construction Contract, means the construction contractor and/or equipment supplier that is party to such Construction Contract.

- 1.28 “Contract Representative” of a Party, means the individual designated by that Party in Exhibit 4 as responsible for ensuring effective communication, coordination and cooperation between the Parties. A Party may change its Contract Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 29.1.
- 1.29 “Contract Year” means each year during the Term beginning on January 1 and ending on December 31 of the year following the Commercial Operation Date (or commencing on the Commercial Operation Date if the Commercial Operation Date is January 1).
- 1.30 “Controlling Interest” with respect to a Person, means the direct ownership of fifty percent (50%) or more of the outstanding ownership interest of such Person, or the direct power to vote such percentage of ownership interest. For the avoidance of doubt, a Controlling Interest does not include ownership or voting rights held through one or more intervening subsidiaries.
- 1.31 [reserved]
- 1.32 “Credit Rating” of a Person means the credit rating then assigned by a Relevant Rating Agency to the long-term, senior, unsecured, non-credit-enhanced indebtedness of that Person.
- 1.33 “Critical Project Milestone” means a Project Milestone designated as a Critical Project Milestone on Exhibit 6.
- 1.34 “Cure Period” is defined in Section 24.3.
- 1.35 “Curtailed Product” is defined in Section 10.3.
- 1.36 “Daily Delay Damages” means an amount equal to: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 1.37 “Daily On-Peak Supply Amount” means, with respect to a month, the sum of the Supply Amounts for the Delivery Hours ending 07:00 through 22:00 PPT for each day in that month.

- 1.38 “Daily Supply Amount” means, with respect to each day of a month, the sum of the Supply Amounts for the Delivery Hours ending 01:00 through 24:00 PPT for that month.
- 1.39 “Defaulting Party” is defined in Section 24.1.
- 1.40 “Deficit Damages” is defined in Section 8.6.1.
- 1.41 “Deficit Damages Rate” means [REDACTED].
- 1.42 “Delivered Amount” means, with respect to any Delivery Hour, the actual amount of Net Energy delivered by Supplier and accepted by Buyer at the Delivery Point during such Delivery Hour.
- 1.43 “Delivered PCs” means PCs that have been delivered by Supplier and awarded to Buyer pursuant to the terms of this Agreement, in accordance with the Portfolio Standard and which have been properly delivered and recorded to Buyer’s PC Account.
- 1.44 “Delivery Hour” means each hour.
- 1.45 “Delivery Point” means, with respect to Net Energy, the delivery point on the Transmission System set forth in Exhibit 5.
- 1.46 “Derating” means a condition of the Generating Facility as a result of which it is unable to produce the Supply Amount during a Delivery Hour.
- 1.47 “Development Security” is defined in Section 17.1.
- 1.48 “Dispute” is defined in Section 21.1.
- 1.49 “Early Purchase Option” is defined in Section 6.2.
- 1.50 “Economic Curtailment” is defined in Section 10.4.1.
- 1.51 “Economic Curtailed Product” is defined in Section 10.4.2.
- 1.52 “Effective Date” is defined in the preamble of this Agreement.
- 1.53 “Electric System Authority” means each of NERC, WECC, WREGIS, Balancing Authority Area Operator, Market Operator, a Regional Transmission Organization, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region.
- 1.54 “Emergency” means any circumstance or combination of circumstances or any condition of the Facility, the Transmission System or the transmission system of

other transmission operators, which is determined or reported by Buyer or Supplier, the Transmission Provider or any Electric System Authority to be (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission system reliability of the transmission system of other electric utilities.

- 1.55 “Energy” means all energy that is generated by the Generating Facility.
- 1.56 “Energy Choice Initiative” means the initiated constitutional amendment that: (a) appeared as ballot question 3 in the State of Nevada general election held on November 8, 2016 (titled Nevada Legislature to Minimize Regulations on the Energy Market and Eliminate Legal Energy Monopolies Amendment); (b) was approved by a majority of the Nevada voters in the State of Nevada general election on November 8, 2016; and (c) will appear on the ballot of the State of Nevada general election scheduled to be held on or about November 6, 2018.
- 1.57 “Energy Imbalance Market” means generation facilities electrically located within the Balancing Authority Area that are, from time to time, bid into or otherwise subject to dispatch instructions issued or originating from the Market Operator.
- 1.58 “Environmental Contamination” means the introduction or presence of Hazardous Substances at such levels, quantities or location, or of such form or character, as to constitute a violation of Laws and present a material risk under Laws that the Project Site will not be available or usable for the purposes contemplated by this Agreement.
- 1.59 “Environmental Law” shall mean any Law relating to the protection, preservation or restoration of human health, the environment, or natural resources, including any Law relating to the releases or threatened releases of Hazardous Substances into any medium (including ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport and handling of Hazardous Substances.
- 1.60 “Event of Default” is defined in Section 24.1.
- 1.61 “EWG” means an “exempt wholesale generator” as defined in the Public Utility Holding Company Act of 2005 and in implementing regulations issued thereunder.
- 1.62 “Excess Energy” means, (a) with respect to the Stub Period, the portion of the Delivered Amount for the Stub Period, if any, that exceeds one hundred percent (100%) of the Adjusted Stub Period Supply Amount, and (b) with respect to a Contract Year, the portion of the Delivered Amount for such Contract Year, if any, that exceeds one hundred percent (100%) of the Adjusted Annual Supply Amount for such Contract Year; provided, however, that Delivered Amount in excess of the Maximum Amount for any Delivery Hour shall be excluded for purposes of determining Excess Energy.

- 1.63 “Excused Product” is defined in Section 3.6.4.
- 1.64 “Expected Nameplate Capacity Rating” is defined in Exhibit 1.
- 1.65 “Facility” means the Generating Facility.
- 1.66 “Fair Market Value” means the price which a willing buyer would pay for the Facility in an arm’s-length transaction to a willing seller under no compulsion to sell, as such price shall be determined by mutual agreement of the Parties or, absent mutual agreement of the Parties, pursuant to Article 21.
- 1.67 “FERC” means the Federal Energy Regulatory Commission and any successor.
- 1.68 “Final Purchase Option” is defined in Section 6.3.
- 1.69 “Force Majeure” is defined in Section 20.2.
- 1.70 “Generating Facility” means Supplier’s generating power plant as described in Exhibit 1, located at the Project Site as identified in Exhibit 3A and 3B and including mechanical equipment and associated facilities and equipment required to deliver Net Energy to the Delivery Point, including items as further described in Exhibits 1, 3A, 3B, 5 and 14, and as such generating power plant may be expanded or otherwise modified from time to time in accordance with the terms hereof.
- 1.71 “Good Utility Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose conduct at issue is a member of any relevant organization and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Good Utility Practice shall include compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.
- 1.72 “Governmental Approval” means any authorization, approval, consent, license, ruling, permit, tariff, certification, exemption, order, recognition, grant, confirmation, clearance, filing, notification, or registration of, by, with or to any Governmental Authority.

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

- 1.82 “Loss” with respect to a Person means, any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Penalties, sanctions, Taxes, judgments, damages, losses or expenses imposed by a third party upon such Person or incurred in connection with a claim by a third party against such Person.
- 1.83 “Licensed Professional Engineer” means a person proposed by Supplier and acceptable to Buyer in its reasonable judgment who: (a) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made in Nevada; (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion; (c) has no economic relationship, association, or nexus with Supplier and is not an employee of its members or Affiliates, other than with the prior written consent of Buyer, for services previously or currently being rendered to Supplier or its members or Affiliates; and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility.
- 1.84 “Market Operator” means, if applicable, the California Independent System Operator Corporation or any other entity performing the market operator function for the Energy Imbalance Market.
- 1.85 “Material Adverse Effect” means, with respect to a Party, a material adverse effect on: (a) the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate; (b) the validity or enforceability of this Agreement or the transaction contemplated hereby; or (c) on the business, assets, operations, property or condition (financial or otherwise) of such Party.
- 1.86 “Maximum Amount” means, with respect to a Delivery Hour, 300 MWh.
- 1.87 “Mead” means the Hourly Mead Index published by Powerdex.
- 1.88 “Measurement Period” means each two (2) consecutive Contract Years commencing with the first two (2) Contract Years of the Term. For the avoidance of doubt, the first Measurement Period is comprised of Contract Year 1 and Contract Year 2, the second Measurement Period is comprised of Contract Year 3 and Contract Year 4, and so on.
- 1.89 “Meter” means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters required for: (a) accurate determination of the: quantities of Delivered Amounts and Station Usage from the Facility and for recording other related parameters required for the reporting of data to Supplier; (b) the computation of the payments due from one Party to another under this Agreement; and (c) compliance with requirements of any Electric System Authority, any Governmental Authority or Transmission Provider. Meters do not include any check meters Supplier may elect to install as contemplated by Section 7.1.1.

- 1.90 “Minimum Credit Rating” of a Person means that the Credit Rating of that Person is at least (a) BBB- (or its equivalent) as determined by Standard & Poor’s and (b) Baa3 (or its equivalent) as determined by Moody’s.
- 1.91 “Monthly Supply Amount” means, with respect to a month, the sum of the Daily Supply Amount for each day in such month.
- 1.92 “Monthly On-Peak Supply Amount” means, with respect to a month, the sum of the Daily On-Peak Supply Amount for each day in such month.
- 1.93 “Moody’s” means Moody’s Investor Services, Inc. and any successor.
- 1.94 “MW” means megawatts of electrical power in AC.
- 1.95 “MWh” and “MWhs” mean a megawatt hour or megawatt hours of electrical energy.
- 1.96 “NAC” means the Nevada Administrative Code.
- 1.97 “NERC” means the North American Electric Reliability Corporation and any successor.
- 1.98 “Net Energy” means all Energy and capacity produced by the Generating Facility, less Station Usage and transformation and transmission losses and other adjustments (e.g., Supplier’s load other than Station Usage), if any, delivered to and received by Buyer at the Delivery Point. Buyer’s payment for Net Energy shall not be for more than the amount of Energy flowing through, and delivered at, the Delivery Point.
- 1.99 “Network Resource” is defined in the OATT.
- 1.100 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.101 “Non-Summer Months” means all months of the Stub Period or a Contract Year, not including the Summer Months.
- 1.102 “Notice” is defined in Section 29.1.1.
- 1.103 “Notice to Proceed” means the initial notification by Supplier to its Construction Contractor to commence work under the Construction Contract.
- 1.104 “NRS” means the Nevada Revised Statutes.
- 1.105 “OATT” means Transmission Provider’s or the Balancing Authority Area Operator’s then-effective Open Access Transmission Tariff, which has been accepted for filing by FERC.
- 1.106 “Offered Interests” is defined in Section 6.1.1.

- 1.107 “Off-Peak” means hours ending 01:00 through 06:00 PPT and hours ending 23:00 through 24:00 PPT of each day.
- 1.108 “On-Peak” means hours ending 07:00 through 22:00 PPT of each day.
- 1.109 “Operating Representative” of a Party means any of the individuals designated by that Party, as set forth in Exhibit 4, to transmit and receive routine operating and Emergency communications required under this Agreement. A Party may change any of its Operating Representatives by providing notice of the change to the other Party in accordance with the notice procedures set forth in Section 29.1.
- 1.110 “Operating Security” is defined in Section 17.2.
- 1.111 “Operation Date” means the first date on which the Generating Facility is energized and operates in parallel with the Transmission System and delivers Net Energy to and at the Delivery Point.
- 1.112 [reserved].
- 1.113 “PPT” means Pacific Standard Time or Pacific Daylight Time, whichever is then prevailing in Las Vegas, Nevada.
- 1.114 “Party” or “Parties” means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.115 “PC” or “Portfolio Energy Credit” means a unit of credit which equals one kilowatt-hour of electricity generated, acquired or saved (or deemed so) by the Facility, all as calculated by the PUCN operations staff and certified by the PC Administrator pursuant to the Renewable Energy Law (or by a successor Governmental Authority pursuant to a successor Law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada), and certified by WREGIS.
- 1.116 “PC Administrator” means the Person appointed by the PUCN to administer the system of Portfolio Energy Credits established pursuant to the Portfolio Standard or a successor Governmental Authority pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada.
- 1.117 “PC Replacement Costs” is defined in Section 3.7.1.
- 1.118 “PC Shortfall” is defined in Section 3.7.1.
- 1.119 “PC Shortfall Amount” is defined in Section 3.7.1.
- 1.120 “PC Shortfall Threshold” is defined in Section 3.7.1.

- 1.121 “Penalties” means any penalties, fines, damages, or sanctions specifically and directly attributable to Supplier’s failure to perform under this Agreement and actually imposed on Buyer pursuant to an order issued by any Governmental Authority, the Transmission Provider or any Electric System Authority.
- 1.122 “Person” or “Persons” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.123 “Planned Outage” is defined in Article 11.1.
- 1.124 “Portfolio Standard” means the amount of electricity that Buyer must generate, acquire, or save from renewable energy systems or efficiency measures specified by the percentage of the total amount of electricity sold by Buyer to its retail customers in the State of Nevada pursuant to the Renewable Energy Law, as established pursuant to NRS 704.7821, and the regulations, guidance and requirements promulgated thereunder, as may be amended, preempted or superseded from time to time (or pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada).
- 1.125 “Power Quality Standards” means the power quality standards established by NERC, WECC, Buyer, IEEE-SA, National Electric Safety Code, the National Electric Code, or their respective successor organizations or codes, as they may be amended or superseded from time to time, and consistent with Good Utility Practice.
- 1.126 “Product” means all (a) Net Energy, (b) PCs (and any equivalent rights in any other jurisdiction), (c) Renewable Energy Benefits, and (d) Capacity Rights, in each case, arising from or relating to the Facility.
- 1.127 “Product Rate” means, for any period, the applicable rate set forth in Exhibit 2A.
- 1.128 “Project Milestone” means each of the milestones listed in Exhibit 6.
- 1.129 “Project Site” means the site for the Facility, as more particularly described in Exhibit 3A and depicted in Exhibit 3B.
- 1.130 “Provisional Energy” means Net Energy (but not Test Energy) that is delivered by Supplier to Buyer prior to the Commercial Operation Date and at the request of Buyer in increments of no less than five (5) MW up to an aggregate maximum of three hundred (300) MW.
- 1.131 “Provisional Rate” is defined in Section 4.1.1.2.

- 1.132 “PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.
- 1.133 “PUCN” means the Public Utilities Commission of Nevada and any successor.
- 1.134 “PUCN Approval” is defined in Section 16.2.
- 1.135 “PUCN Approval Date” means the date the PUCN Approval becomes effective pursuant to NAC §703.790.
- 1.136 “PUCN Approval Deadline” means December 28, 2018.
- 1.137 “QF” means a cogeneration or small power production facility that meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207.
- 1.138 “Qualified Financial Institution” means a financial institution having an office in the United States, with a [REDACTED]
[REDACTED]
[REDACTED]
- 1.139 “Qualified Transferee” means a Person that is at least as financially and operationally qualified as Supplier as of the Effective Date and, at a minimum, (a) has (on a consolidated basis, along with such Person’s Affiliates) [REDACTED]
[REDACTED] or provides adequate assurance in an amount and form reasonably acceptable to Buyer, and (b) has (or agrees to contract with an operator who has) at least three (3) years of experience operating a generating plant of similar technology and similar size to the Facility.
- 1.140 “Relevant Rating Agency” means Moody’s or S&P.
- 1.141 “Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions reductions attributes, Portfolio Energy Credits (and any equivalent rights in any other jurisdictions), credits, offsets, allowances, reporting rights and benefits, howsoever entitled, and includes any and all: (a) available, allocated, assigned, awarded, certified or otherwise transferred or granted to Supplier or Buyer by the PC Administrator or any Governmental Authority in any jurisdiction in connection with the Facility or the generation, transmission or use of the Product, including those related to the Clean Air amendments of 1970 and regulations of the Environmental Protection Agency thereunder; (b) associated with the production of Energy or based in whole or part on the Facility’s use of renewable resources for generation or because the Generating Facility constitutes a Renewable Energy System or the like or because the Facility does not produce or produces less greenhouse gasses, regulated emissions or other pollutants, whether any such credits, offsets, allowances or benefits exist now or in the future and whether they arise under existing Law or any future Law or whether such credit, offset, allowance or benefit or any Law, or the nature of such, is foreseeable or

unforeseeable; (c) credits, offsets, allowances or benefits attributable to Energy generated and consumed by the Facility, such as Station Usage (parasitic load); (d) claims, credits, benefits, emissions, reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or generation of the Product, and include : (1) any avoided emissions of pollutants into the air, soil, or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (e) the Renewable Energy Benefits Reporting Rights. Renewable Energy Benefits exclude and do not include: (i) any Tax Credits or other Tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility; (ii) matters designated by Buyer as sources of liability; and (iii) adverse wildlife or environmental impacts.

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

- 1.147 “Restricted Period” is defined in Section 24.5.1.
- 1.148 “Restricted Transaction” is defined in Section 6.1.1.
- 1.149 “ROFO” is defined in Section 6.1.
- 1.150 “ROFO Period” is defined in Section 6.1.1.
- 1.151 “ROFO Seller” is defined in Section 6.1.1.
- 1.152 “Seller ROFO Notice” is defined in Section 6.1.1.
- 1.153 “Shortfall” is defined in Section 3.6.1.1 with respect to the Summer Months and Section 3.6.2.1 with respect to Non-Summer Months.
- 1.154 “Shortfall Amount” is defined in Section 3.6.1.2 for the Summer Months and Section 3.6.2.2 for Non-Summer Months.
- 1.155 “Shortfall Threshold” is defined in Section 3.6.1.1 for the Summer Months and Section 3.6.2.1 for the Non-Summer Months.
- 1.156 “Standard and Poor’s” or “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc., and any successor.
- 1.157 “Standby Service” means the electric service supplied by Nevada Power Company for Station Usage pursuant to Schedule LSR, Large Standby Service Rider, as such tariff is in effect and as may be amended from time to time.
- 1.158 “Station Usage” means all Energy used by the Facility.
- 1.159 “Stub Period” means the period of time commencing on the Commercial Operation Date and ending on December 31 of the year in which the Commercial Operation Date occurs (provided, however, that if the Commercial Operation Date occurs on January 1, then the term “Stub Period” will have no application to this Agreement).
- 1.160 “Stub Period Supply Amount” means the sum of the Daily Supply Amount for each day of the Stub Period.
- 1.161 “Summer Months” means the months of June, July, August and September occurring during the Stub Period or a Contract Year.
- 1.162 “Supplier” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.163 “Supplier’s Lenders” means any Person (or its trustees and other agents), other than an Affiliate of Supplier, and its permitted successors and assigns, providing money or credit to Supplier or its Affiliates in connection with any development, bridge, construction, takeout, letter of credit, permanent debt, tax equity or other financing

or refinancing for the Facility, including lease, inverted lease, sale-leaseback, partnership-flip, monetization of tax benefits, back-leverage financing, or credit derivative arrangements.

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

- 1.176 “Yearly PC Amount” means the amount of PCs for a Contract Year as stated in Exhibit 18.

2. TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

- 2.1 Effective Date. Subject to Article 16, this Agreement shall become effective on the Effective Date.
- 2.2 Term. Supplier’s obligation to deliver Product, and Buyer’s obligation to accept and pay for Product, shall commence on the Operation Date and shall continue for a period of 25 Contract Years, subject to earlier termination of this Agreement pursuant to the terms hereof (the “Term”); provided, however, that Buyer’s obligations to pay for or accept any Product are conditioned on the receipt of the PUCN Approval in form and substance acceptable to Buyer in its sole discretion. Buyer shall not be obligated to accept or pay for any Product, unless the PUCN Approval is received in form and substance acceptable to Buyer in its sole discretion or Buyer waives its right to terminate this Agreement pursuant to Article 16.
- 2.3 Termination.
- 2.3.1 For Cause. Except as provided below in this Section 2.3.1, this Agreement may be terminated at any time by the Non-Defaulting Party upon two (2) Business Days’ prior notice to the Defaulting Party if an Event of Default has occurred and is continuing (after the applicable Cure Period (if any) in Section 24.3 has expired); provided, however, that any purported termination by Supplier shall first require that Supplier deliver Notice to Buyer stating prominently therein in type font no smaller than 14 point all-capital letters that “THIS IS A TERMINATION NOTICE UNDER A RENEWABLE RESOURCE PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED,” and shall state therein any amount purported to be owed and wiring instructions. Notwithstanding any provision to the contrary contained in this Agreement, Supplier will not have any right to terminate this Agreement if the Event of Default that gave rise to the termination right is cured within fifteen (15) Business Days after receipt of such notice.
- 2.3.2 Failed Conditions Precedent. This Agreement may be terminated by Buyer in accordance with Article 16 without payment or penalty or liability of any kind.
- 2.3.3 Force Majeure. This Agreement may be terminated by Buyer if Supplier’s obligations hereunder have been excused by the occurrence of an event of Force Majeure for longer than twelve (12) consecutive months or three hundred sixty (360) days in any five hundred forty (540) day period.

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

3. SUPPLY SERVICE OBLIGATIONS

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

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

3.4 Delivery Responsibilities.

3.4.1 Product. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and throughout the Term, Supplier shall supply and deliver the Product to Buyer at the Delivery Point.

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

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

3.4.4 Provisional Energy Delivery. Buyer may request by written notice to Supplier to deliver Provisional Energy prior to the Commercial Operation Date, in increments as defined in Section 1.15, and on and after a specified date. Supplier may, in its sole discretion, elect to deliver such Provisional Energy to Buyer by delivering written notice thereof to Buyer. Notwithstanding the foregoing, Buyer and Supplier shall mutually agree on

the amounts of Provisional Energy to be supplied and the date and time when such Provisional Energy shall be supplied.

3.4.5 Voltage Support. The IA requires the Facility to maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to the Facility and all generators in the control area on a comparable basis. In addition to the requirements of the IA, the Facility will provide voltage set point control at the point of interconnection within the range of 0.90 leading to 0.90 lagging at full rated real-power output, as available, within the capabilities of the Facility. The Facility shall provide dynamic reactive power as required for voltage regulation in accordance with the unit real/reactive capability curves provided in Exhibit 22.

3.5 Renewable Energy System. Notwithstanding anything in this Agreement to the contrary, Buyer's obligations to purchase and accept delivery of Product shall be excused to the extent that the Generating Facility: (a) is not at the time of delivery qualified as a Renewable Energy System; or (b) is not delivering to Buyer all of the Renewable Energy Benefits associated with the Net Energy being delivered; provided that if there is a change in the Renewable Energy Law after the execution of this Agreement that causes the Net Energy from the Generating Facility to be ineligible or non-qualifying as a Renewable Energy System under such Renewable Energy Law, Buyer shall only be excused from such obligation to the extent that Supplier fails to use commercially reasonable efforts to comply with such Renewable Energy Law. For purposes hereof, commercially reasonable efforts shall include the expenditure of amounts up to [REDACTED] in any Contract Year and up to [REDACTED] over the entire Term (the "Compliance Cost Cap"). If Supplier reasonably concludes that it may incur costs in excess of the Compliance Cost Cap in any Contract Year in order to comply with the Renewable Energy Law, it shall provide Buyer with a notice itemizing such excess costs. Buyer shall evaluate such notice and either: (i) agree to reimburse Supplier for such excess costs (the "Accepted Compliance Costs"); or (ii) waive Supplier's obligation to comply with the Renewable Energy Law to the extent such inability results from failing to expend amounts in excess of the Compliance Cost Cap. If Buyer agrees to reimburse Supplier for the Accepted Compliance Costs, then Supplier shall be required to comply in full with the Renewable Energy Law, and Buyer shall reimburse Supplier for Supplier's actual and reasonable out-of-pocket compliance costs in excess of the Compliance Cost Cap, not to exceed the Accepted Compliance Costs. If Supplier's inability to comply with the Renewable Energy Law cannot be cured by the expenditure of money, such noncompliance shall be excused and shall not constitute a default or an Event of Default, and Buyer's payment obligations to Supplier hereunder shall not be excused or reduced in any manner. In the event of any change in the Renewable Energy Law after the execution of this Agreement, each Party's rights and obligations under Sections 3.7, 8.1, 8.8, 15, 24.1.4 and 25.11, and Article 5 shall be subject to this Section 3.5 related to change in Renewable Energy Law.

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

3.6.1 Summer Months – On-Peak.

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

3.6.2 Non-Summer Months – On-Peak.

- 3.6.2.1 If, for the Non-Summer Months of any Measurement Period, the sum of all Delivered Amounts during the On-Peak hours of such Non-Summer Months is less than the Shortfall Threshold for such Non-Summer Months, then a shortfall of Net Energy (a “Shortfall”) will be deemed to exist for such Non-Summer Months. “Shortfall Threshold” means, with respect to the Non-Summer Months in any Measurement Period, the product of (a) [REDACTED] multiplied by (b) the difference between (i) the sum of Monthly On-Peak Supply Amount for such Non-Summer Months minus (ii) the total amount of Net Energy associated with Excused Product (if any) during the On-Peak hours of such Non-Summer Months.
- 3.6.2.2 If a Shortfall exists with respect to the Non-Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. “Shortfall Amount” means, with respect to the Non-Summer Months in any Measurement Period, an amount expressed in MWh equal to the Shortfall Threshold for such Non-Summer Months minus the sum of all Delivered Amounts during the On-Peak hours of such Non-Summer Months, provided that if the calculation of Shortfall Amount yields an amount of zero or less for the Non-Summer Months, then no Shortfall Amount will be deemed to exist with respect to such Non-Summer Months.
- 3.6.2.3 Buyer’s “Replacement Costs” with respect to any Non-Summer Months in any Measurement Period shall equal (a) the Shortfall Amount for such Non-Summer Months multiplied by (b) an amount equal to Average On-Peak Mead for the Non-Summer Months minus the applicable Product Rate, provided that if the calculation of Replacement Costs yields an amount of zero or less for such Non-Summer Months, then no Replacement Costs will be payable with respect to such Non-Summer Months.
- 3.6.2.4 Within five (5) Business Days after the end of any Measurement Period in which a Shortfall has occurred with respect to the Non-Summer Months, Supplier will calculate the Replacement Costs with respect to such Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Replacement Costs are calculated.
- 3.6.3 Not a Penalty. The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.6 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the damages for

the failure of Supplier to supply and deliver Net Energy are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

- 3.6.4 Calculations. As soon as practicable following any period of: (a) Force Majeure; (b) Buyer's failure to accept Net Energy or PCs in breach of this Agreement; (c) Emergency (except for an Emergency with respect to the Facility that is not also a Force Majeure); (d) Planned Outage; (e) Curtailed Product; or (f) Economic Curtailed Product, in each case as a result of which Supplier has failed to deliver all or any portion of the Product to Buyer during such period and, subject to the terms of this Agreement, such failure and Supplier's liability for damages therefor are excused, Supplier shall calculate the amount of Net Energy that Supplier was unable to generate and deliver to Buyer at the Delivery Point solely as a result of such event, by summing for each hour of the period the difference between (i) the Net Energy that Supplier would have been capable of delivering if not for such event during each hour (not to exceed the Supply Amount) and (ii) the Delivered Amount during each hour (the "Excused Product"); provided that the amount of Curtailed Product shall be determined in accordance with Section 10.3 and the amount of Economic Curtailed Product shall be determined in accordance with Section 10.4. Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer. If Buyer disagrees with the calculation of Excused Product, then the Excused Product will be determined through the Dispute resolution provisions of Article 21.

3.7 PC Shortfall; PC Replacement Costs.

- 3.7.1 If after the PC Administrator issues all the PC statements or certificates for any Measurement Period there is a PC Shortfall, then Supplier shall pay Buyer for the replacement costs and any Penalties associated with such PC Shortfall (collectively, the "PC Replacement Costs"). Subject to the last sentence of this Section 3.7.1, for purposes of this Agreement a "PC Shortfall" shall occur in any Measurement Period if the sum of all Delivered PCs is less than the "PC Shortfall Threshold" defined as the product of (a) [REDACTED] multiplied by (b) an amount equal to (i) the sum of the Yearly PC Amount for the Contract Years in such Measurement Period minus (ii) the total amount of PCs associated with Excused Product during such Measurement Period. For purposes of this Agreement, a "PC Shortfall Amount" with respect to any Measurement Period means: (A) the PC Shortfall Threshold for such Measurement Period; minus (B) the Delivered PCs during such Measurement Period. If the calculation of the PC Shortfall Amount set forth in this Section 3.7.1 yields an amount of zero or less for any Measurement Period, then no PC Shortfall will be deemed to exist with respect to such Measurement Period.

- 3.7.2 The PC Replacement Costs shall be determined by Buyer exercising its reasonable discretion based on the estimated cost of purchasing PCs to replace the PC Shortfall Amount from the same resource type with a comparable expiration date or the cost of replacing the PC Shortfall Amount with PCs of Buyer's choice already in Buyer's PC Account; provided, however, that Buyer shall not be required to actually purchase replacement PCs in order to receive payment from Supplier for PC Replacement Costs. Buyer shall include in the PC Replacement Costs any Penalties allocable for any Measurement Period to Supplier's PC Shortfall Amount as a proportion of Buyer's aggregate shortfall under the applicable Portfolio Standard (factoring in Supplier's PC Shortfall Amount in prior Measurement Periods carried forward as a deficit or reducing the surplus in such prior Measurement Periods).
- 3.7.3 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.7 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the amount payable by Supplier pursuant to this Section 3.7 is difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.
- 3.7.4 All information used by Buyer to establish PC Replacement Costs shall be verifiable by Supplier; and Buyer shall provide reasonable access to all such information supporting calculations within five (5) Business Days of Supplier's request for such information. Supplier agrees to execute a confidentiality agreement regarding the review of this information upon request by Buyer.
- 3.7.5 For any Measurement Period, Buyer, at its sole option, may allow Supplier to meet its PC Replacement Cost obligation by transferring a quantity of PCs to Buyer in the amount of no less than the PC Shortfall Amount. Such PCs shall be from the same resource type with a comparable expiration date as the PCs that should have been delivered to Buyer under this Agreement.
- 3.8 Supply Degradation. Beginning with the second Contract Year, and each Contract Year thereafter, each Supply Amount, the Maximum Amount and the Yearly PC Amount shall be reduced by [REDACTED]. No later than January 1 of each Contract Year Buyer shall deliver to Supplier revised Exhibits 13 and 18 which shall reflect such reductions, and effective as of January 1 of each Contract Year this Agreement shall automatically be amended to substitute such revised Exhibits 13 and 18 for the then existing Exhibits 13 and 18.

4. PRICE OF PRODUCT

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

4.1.1 Prior to the Commercial Operation Date.

- 4.1.1.1 On and after the Operation Date and prior to the Commercial Operation Date, all Product associated with Delivered Amounts of Net Energy from the Generating Facility, other than (a) Excess Energy (which shall not be compensable) and (b) Provisional Energy (“Test Energy”), shall be paid for by Buyer at the lesser of: (i) [REDACTED] of the applicable Product Rate; or (ii) the Mead for each Delivery Hour of Test Energy (“Test Product Rate”).
- 4.1.1.2 Notwithstanding the above, if Buyer requests Supplier to deliver Provisional Energy and Supplier elects to deliver Provisional Energy and delivers written notice to Buyer that it is delivering Provisional Energy in accordance with Section 3.4.4, Buyer shall pay Supplier [REDACTED] of the applicable Product Rate (“Provisional Rate”) for such Provisional Energy.
- 4.1.1.3 Provisional Energy shall be distinguished from Test Energy in so far as Provisional Energy is for a determined amount of energy provided as the Generating Facility is capable of consistently generating such amounts of energy, whereas Test Energy is energy generated after the Operation Date and prior to Commercial Operation that is needed to commission the Generating Facility. Supplier shall provide notice when Provisional Energy is available and Buyer and Supplier shall mutually agree to the date and time when Provisional Energy shall be supplied in accordance with Section 3.4.4. Five (5) Business Days prior to the start of each month Supplier shall provide notice to Buyer with an estimate of the forecasted amounts of Test Energy and Provisional Energy for that month with correlated meter data for actual amounts of Test Energy and Provisional Energy amounts to be provided with invoicing. Such determination shall be subject to verification by Buyer in the exercise of its reasonable discretion.

4.1.2 Subsequent to the Commercial Operation Date.

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

Date occurs if the Commercial Operation Date occurs on or after the sixteenth (16th) day of such month.

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

4.1.2.3 All Product associated with (a) Excess Energy that with respect to the Stub Period or any Contract Year, as applicable, that exceeds [REDACTED] of, but is less than or equal to [REDACTED] of, respectively, the Adjusted Stub Period Supply Amount or Adjusted Annual Supply Amount, shall be paid for at the rate of [REDACTED], and (b) Excess Energy that with respect to the Stub Period or any Contract Year, as applicable, that exceeds [REDACTED] of, respectively, the Adjusted Stub Period Supply Amount or Adjusted Annual Supply Amount, shall be paid for at the Test Product Rate.

4.1.3 No payment shall be owing to Supplier for any Product associated with Energy that is for any reason not Net Energy except as otherwise provided in Section 4.1.2.2.

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

4.2 Excused Product. Buyer shall not pay for Product comprising Excused Product except as otherwise provided in Section 4.1.2.2, or when Supplier is otherwise in default or breach of this Agreement.

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

5. PORTFOLIO ENERGY CREDITS/RENEWABLE ENERGY BENEFITS

5.1 Delivery of Renewable Energy Benefits and Portfolio Energy Credits.

5.1.1 All Renewable Energy Benefits are exclusively dedicated to and vested in Buyer. Supplier shall deliver to Buyer all Renewable Energy Benefits derived from the Facility, including Renewable Energy Benefits associated with Energy for Station Usage. Supplier shall timely prepare and execute all documents and take all actions necessary under Law or the requirements of any Governmental Authority or Person and otherwise to cause the Renewable Energy Benefits to vest in Buyer, without further compensation, including: (a) taking all actions necessary to register or certify any Renewable Energy Benefits or the Facility with the PUCN or any other Person (pursuant to NAC 704.8921 or otherwise) and WREGIS; (b) causing the automatic transfer of the Renewable Energy Benefits derived from the Facility to Buyer (pursuant to NAC 704.8927 or otherwise); (c) providing all production data and satisfying the reporting requirements of the PUCN or PC Administrator, as applicable; and (d) cooperating in any registration by Buyer of the Facility in any other renewable portfolio standard or equivalent program in any states in which Buyer may wish to register or maintain registration of the Facility, including providing copies of all such information as Buyer reasonably requires for such registration. Without limitation of the foregoing, Supplier acknowledges that the Renewable Energy Benefits, may be used by Buyer in meeting its present and future obligations pursuant to applicable Law, including the Portfolio Standard, and agrees to cooperate with Buyer in all respects to assist in Buyer's compliance with all applicable requirements set forth in the Portfolio Standard and provide all information reasonably requested by Buyer or otherwise necessary to allow the PUCN to determine compliance with the Portfolio Standard. No Person other than Buyer (or its designee) will be entitled to claim Renewable Energy Benefits in any jurisdiction in connection with the Facility. All representations and warranties made by Supplier with respect to Renewable Energy Benefits shall not be diminished or excused notwithstanding any transfer by Buyer to any purchaser or transferee of such Renewable Energy Benefits or part thereof.

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

5.2 Injunction. If any Person other than Buyer (or its designee) attempts to claim such Renewable Energy Benefits or part thereof, the Parties agree that remedies at Law

may be inadequate to protect Buyer in the event of a breach of this Section 5.2, and Supplier hereby in advance agrees: (a) that Buyer shall be entitled to seek without proof of actual damages or the necessity of posting any bond or other security, temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Supplier from committing or continuing any breach of this Section 5.2; and (b) that Supplier will promptly undertake all necessary actions to prevent such other Person from claiming such Renewable Energy Benefits (including joining with or otherwise assisting Buyer in seeking the relief described in clause (a)).

- 5.3 Transfers. If there is a PC Shortfall, Buyer shall be entitled to PC Replacement Costs for Renewable Energy Benefits associated with any Energy for which WREGIS certificates, PCs or any part of the Renewable Energy Benefits that are not delivered to Buyer all in accordance with Section 3.7. Supplier shall promptly give Buyer copies of all documentation it submits to WREGIS or PUCN or otherwise with respect to Renewable Energy Benefits. Further, in the event of the promulgation of a scheme involving any part of the Renewable Energy Benefits administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Supplier shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Renewable Energy Benefits belong to any person other than Buyer. Without limiting the generality of Buyer's ownership of the Renewable Energy Benefit Reporting Rights, Buyer may report under such program that all Renewable Energy Benefits purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers.

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

6.1 Right of First Offer ("ROFO").

- 6.1.1 Except in accordance with this Section 6.1.1, Supplier: (a) shall not enter into a binding agreement to sell or transfer the Facility; and (b) shall cause its immediately upstream owner(s) (for the avoidance of doubt, Persons directly owning equity in Supplier) (together with Supplier, each a "ROFO Seller") not to enter into a binding agreement to sell or transfer any ownership interest in Supplier (the Facility and ownership interests in Supplier, each the "Offered Interests") other than to an Affiliate in accordance with the provisions of Section 23.2 and other than a Supplier's Lenders Transaction (each a "Restricted Transaction"). For purposes hereof, a "Supplier's Lenders Transaction" means any transaction between Supplier or its Affiliates, on the one hand, and Supplier's Lenders, on the other hand. If a ROFO Seller intends to enter into a Restricted Transaction, Supplier shall provide Buyer with written notice of same (a "Seller ROFO Notice"), and Buyer shall have a right of first offer with respect to the purchase of such Offered Interests. Within fifteen (15) days, if prior to the

Commercial Operation Date, or thirty (30) days, if on or after the Commercial Operation Date, after receipt of the Seller ROFO Notice, Buyer shall notify Supplier in writing of its decision whether or not to negotiate with ROFO Seller for the purchase of the Offered Interests (the “Buyer ROFO Notice”), and any failure to provide the Buyer ROFO Notice in such period shall be treated as a Buyer election not to negotiate. If Buyer elects to negotiate with ROFO Seller for the purchase of the Offered Interests, Supplier shall cause ROFO Seller to negotiate in good faith and exclusively with Buyer, for a period of not less than thirty (30) days, if prior to the Commercial Operation Date, or ninety (90) days, if on or after the Commercial Operation Date, following ROFO Seller’s receipt of the Buyer ROFO Notice, the terms of a purchase by Buyer or its designee of the Offered Interests (if prior to the Commercial Operation Date, such thirty (30)-day period as extended, if applicable, by such ninety (90)-day period, and if on or after the Commercial Operation Date, such fifteen (15)-day period as extended, if applicable, by such thirty (30)-day period, the “ROFO Period”).

6.1.2 In the event that Buyer does not elect to negotiate with ROFO Seller for the purchase of the Offered Interests pursuant to Section 6.1.1, or if definitive transaction documents between ROFO Seller and Buyer or its designee have not been executed with respect to the Offered Interests within the ROFO Period, ROFO Seller may negotiate a Restricted Transaction with any other Person, subject, in all cases, to the terms and conditions of this Agreement, including Section 6.1.3 and the provisions of Article 23. In no event may ROFO Seller enter into a Restricted Transaction with any other Person on terms (taken as a whole) less favorable to ROFO Seller than such terms, if any (taken as a whole), as were offered by Buyer during the ROFO Period.

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

6.2 Early Purchase Option. Supplier hereby grants to Buyer options to purchase (“Early Purchase Option”) on a date chosen by Buyer during the six (6) months after the Facility’s 10th, 15th, and 20th anniversaries of the Commercial Operation Date at the greater of (i) Fair Market Value and (ii) the price determined in accordance with Exhibit 24, which option may be exercised by Buyer providing written notice to Supplier no less than one hundred and eighty (180) days before the applicable anniversary.

6.3 Purchase Option at the End of Term. Supplier hereby grants to Buyer the option to purchase the Facility at the end of the Term at the greater of (i) Fair Market Value and (ii) the price determined in accordance with Exhibit 24 (the “Final Purchase Option”), which option may be exercised by Buyer providing written notice to

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

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

7. METERING, INVOICING AND PAYMENTS

- 7.1 Metering.

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

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

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

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

7.2 Invoices.

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

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

8. FACILITY CONSTRUCTION; OPERATIONS AND MODIFICATIONS

- 8.1 Construction of Facility. Supplier shall construct or cause the Facility to be constructed in accordance with Good Utility Practices and the Project Milestones and to ensure that: (a) Supplier is capable of meeting its supply and delivery obligations with respect to Product over the Term; (b) the Facility is consistent with the technical specifications set forth in Exhibit 11; (c) subject to Section 3.5 if any change in Law, the Generating Facility is at all times considered a Renewable

Energy System; and (d) subject to Section 3.5 if any change in Law, the Generating Facility is at all times in compliance with all requirements imposed on Renewable Energy Systems as set forth in the applicable Renewable Energy Law. Supplier shall deliver to Buyer an ALTA Survey of the Project Site within ten (10) days of such survey becoming available to Supplier, but in no event later than the issuance of the Notice to Proceed in accordance with Exhibit 6. Supplier shall provide to Buyer in a form satisfactory to Buyer: (y) not later than the Project Milestone described in Section 2(A) of Exhibit 6, a completed version of Exhibit 14; and (z) within thirty (30) days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as built. At Buyer's request, Supplier shall provide Buyer with copies of the Construction Contract and any documentation and drawings reasonably requested by Buyer, redacted of any pricing information or other proprietary information and any other information Supplier is not permitted to disclose pursuant to a confidentiality agreement, provided that Supplier shall use commercially reasonable efforts to secure in the Construction Contract the ability to disclose the terms of the Construction Contract other than pricing information. Under no circumstances shall the Facility share facilities (except for generation tie-line facilities) with another facility, whether an affiliate of Supplier or not. The Facility and its mechanical components, buildings, and infrastructure shall be used solely for the purpose of generating Energy under this Agreement.

8.2 Performance of Project Milestones. Supplier shall complete each Project Milestone specified in Exhibit 6 on or before 16:00 hours PPT on the date specified for each Project Milestone listed in Exhibit 6.

8.2.1 Completion of Project Milestones. Upon Supplier's completion of each Project Milestone, Supplier shall provide to Buyer in writing, pursuant to Section 29.1, documentation as specified in Exhibit 6 and reasonably satisfactory to Buyer demonstrating such Project Milestone completion. Such documentation shall be provided within thirty (30) days of such completion but not later than the date specified for such Project Milestone listed in Exhibit 6. Buyer shall acknowledge receipt of the documentation provided under this Section 8.2.1 and shall provide Supplier with written acceptance or denial of each Project Milestone within fifteen (15) Business Days of receipt of the documentation. If Buyer does not acknowledge receipt or provide written acceptance or denial of any Project Milestone within fifteen (15) Business Days, then such Project Milestone will be deemed to occur on the date that such documentation was provided to Buyer. Failure of Supplier to achieve a Critical Project Milestone on or before the scheduled date (or, in the case of the Commercial Operation Deadline, after expiration of the applicable period for which Daily Delay Damages are owed by Supplier pursuant to Section 8.5.1) will constitute an Event of Default as provided in Article 24. If any Project Milestone (other than a Critical Project Milestone) is not completed on or before the date specified in Exhibit 6, Supplier will (i) inform Buyer of a revised projected date for the occurrence or completion of such Project Milestone (which will be deemed the new deadline for such Project Milestone), and any impact on the timing of the Commercial Operation Date (and on any other Project

Milestone) and (ii) provide Buyer with a written report containing Supplier's analysis of the reasons behind the failure to meet the original Project Milestone deadline and whether remedial actions are necessary or appropriate, and describing any remedial actions that Supplier intends to undertake to ensure the timely achievement of the Commercial Operation Date. Provided that Supplier complies with the preceding sentence, no failure of Supplier to achieve a Project Milestone (other than a Critical Project Milestone) on or before the scheduled date will constitute a default or an Event of Default.

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

8.3 Commercial Operation Date.

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

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

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

"I, [Name], in my capacity as the duly appointed [Title] of [Supplier] ("Supplier") hereby certify, on behalf of Supplier that: (a) the Facility has been constructed in accordance with Good Utility Practice and the Generating Facility has delivered Net Energy to and at the Delivery Point; (b) all of the applicable requirements set forth in Sections 8.1, 8.3 and 17.2, and Exhibits 6 and 7 of the Long-Term Renewable Power Purchase Agreement between Supplier and Buyer dated [____], ("Agreement") have been satisfied; (c) I am authorized to act on

behalf of and bind Supplier with respect to this certificate; (d) Supplier has received the Supplier's Required Regulatory Approvals listed in Exhibit 10 and has entered into or obtained all Required Facility Documents as listed in Exhibit 12, true, correct and complete copies of which are attached (other than confidential or commercial terms which have been redacted); and (e) Supplier acknowledges that Buyer is relying on this certification in connection with carrying out its obligations under the Agreement and Supplier will indemnify Buyer for any inaccuracy related to this certification."

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

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

8.3.2.4 An opinion from an attorney licensed in the state of Nevada that is not an employee of Supplier (or any Affiliate) and has no financial interest in the Facility addressed to Buyer with respect to such customary matters as Buyer may reasonably request, involving the delivery and issuance of Governmental Approvals, the execution and delivery of material project documents, real estate documents, and other documents, and factual matters regarding the opinion provider's knowledge relating to such documents, and in form and substance reasonably satisfactory to Buyer.

8.3.3 Dispute of Commercial Operation. Buyer will have fifteen (15) Business Days after receipt of the certifications required by this Section 8.3 in which to Dispute the Commercial Operation Date by written notice to Supplier. In the event of such a Dispute, Buyer and Supplier will attempt in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within fifteen (15) Business Days' after Buyer's notice of Dispute, then either Party may seek resolution of the Dispute in accordance with Article 21. Notwithstanding the foregoing, Buyer's failure to Dispute the certification will in no way affect its rights to indemnification for any

inaccuracy related to the certification, including overpayments that may be paid by Buyer due to such inaccurate certification.

8.4 Failure to Achieve Commercial Operation.

8.4.1 In the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline and Supplier fails to promptly pay Daily Delay Damages as provided in Section 8.5.1, Buyer may elect to terminate this Agreement and, Supplier shall pay to Buyer, and Buyer shall be entitled to collect or retain, as applicable, the full Development Security amount as liquidated damages for Supplier's failure to meet its obligations prior to the Commercial Operation Deadline. Upon Buyer's collection of the full Development Security amount from Supplier (or from security provided on Supplier's behalf), this Agreement will be terminated, and neither Party will have any further obligations hereunder including under Section 8.5, except those obligations expressly provided to survive termination pursuant to Section 2.4. The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if the Supplier does not meet its obligations hereunder prior to the Commercial Operation Deadline, and, accordingly, the Parties agree that retention by Buyer of the full Development Security is reasonable as liquidated damages, and is not a penalty. The amount of the Development Security shall be an aggregate cap on Supplier's liability under this Agreement prior to the Commercial Operation Date.

8.4.2 [reserved].

8.4.3 Subject to the last sentence of Section 29.8, the provisions of this Section 8.4 are in addition to, and not in lieu of, any of Buyer's rights or remedies under this Agreement, including Article 24.

8.5 Delay Damages.

8.5.1 In the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline, then for each day up to, but not exceeding, one hundred and eighty (180) days, that Supplier fails to achieve Commercial Operation, Supplier shall be obligated to pay to Buyer liquidated damages equal to Daily Delay Damages. If Daily Delay Damages have been accumulated for one hundred and eighty (180) days and Commercial Operation has not been achieved, Buyer may terminate this Agreement. Supplier shall pay any amounts owed to Buyer under this Section 8.5 in the Billing Periods immediately succeeding the Billing Period during which Supplier's obligation to pay such amounts arose.

8.5.2 In addition to amounts payable pursuant to Section 8.5.1, Supplier shall be liable, in accordance with Section 18.1, for any Penalties incurred or

suffered by Buyer as a result of Supplier's failure to achieve Commercial Operation by the Commercial Operation Deadline.

8.5.3 The provisions of this Section 8.5 are in addition to, and not in lieu of, any of Buyer's rights under Section 24.1.6.

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

8.6 Nameplate Damages.

8.6.1 If the Certified Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating, Supplier shall provide Buyer a onetime payment in an amount equal to (a) subtracting (i) Certified Nameplate Capacity Rating from (ii) the Expected Nameplate Capacity Rating in MW, multiplied by (b) Deficit Damages Rate per MW of difference ("Deficit Damages"). Deficit Damages, if any, shall be paid to Buyer within five (5) business days of Buyer's receipt of the certification required in Section 8.3.2.2. Upon payment of Deficit Damages: (i) Exhibit 1 shall be revised to reflect the Certified Nameplate Capacity Rating; and (ii) the Annual Supply Amount, each Supply Amount, the Maximum Amount and the Yearly PC Amount shall each be adjusted by the ratio of the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating, and Exhibits 13 and 18 shall be revised accordingly.

8.6.2 If the Certified Nameplate Capacity Rating is greater than the Expected Nameplate Capacity Rating by greater than [REDACTED], Supplier shall pay Buyer a onetime payment in an amount equal to one half of the Development Security, paid to Buyer within five (5) Business Days of Buyer's receipt of the certification required in Section 8.3.2.2. If Supplier fails to make such payment in a timely manner, Buyer may retain such amount from the Development Security or Operating Security. Supplier shall take all necessary actions, including but not limited to software or hardware solutions, to limit the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating.

8.7 Modification. Buyer shall not be permitted to make any modification to the Generating Facility that would increase the Expected Nameplate Capacity Rating, generating capability, or the rate of production and delivery of Net Energy of the Generating Facility. Without the prior written consent of Buyer, which may be withheld in Buyer's sole discretion, Supplier shall not make any modification to the Facility that might: (a) expose Buyer to any additional liability or increase its obligations under this Agreement; (b) adversely affect Supplier's or Buyer's ability to perform its obligations under this Agreement or any Law or to any third party;

or (c) increase the Expected Nameplate Capacity Rating, generating capability, or the rate of production and delivery of Net Energy of the Generating Facility. Any permitted modifications shall be conducted in accordance with Good Utility Practice and all applicable Laws and reliability criteria, as such may be amended from time to time, and the requirements of Article 11. If Supplier makes a modification to the Facility that is not approved by Buyer, Buyer shall be entitled to receive in addition to any other remedy available to Buyer as liquidated damages the full amount of the Development Security or Operating Security, as applicable. The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if the Supplier does not meet its obligations hereunder, and, accordingly, the Parties agree that payment by Supplier of Development Security or Operating Security, as applicable, is reasonable as liquidated damages, and is not a penalty. Notwithstanding any provision of this Section 8.7 to the contrary, Supplier may make all repairs and related replacements of equipment it determines in its sole discretion to be necessary or appropriate, provided that such modification does not violate this Section 8.7.

- 8.8 Operation and Maintenance. Subject in all cases to Section 3.5 if there is any change in law, Supplier, at all times shall install, operate, maintain and repair the Facility in accordance with Good Utility Practice and applicable Laws and to ensure: (a) Supplier is capable of meeting its supply obligations over the Term; (b) the Generating Facility is at all times a Renewable Energy System; and (c) Supplier is at all times in compliance with all requirements of a renewable energy generator set forth in the Renewable Energy Law. Supplier shall (x) maintain records of all operations of the Facility in accordance with Good Utility Practice, and (y) follow all regulations, directions and procedures of Buyer, Transmission Provider, any Electric System Authority and any other Governmental Authority to protect and prevent the Transmission System from experiencing any negative impacts resulting from the operation of the Facility. In the event of an inconsistency between any applicable procedures, Buyer may direct which procedures shall govern (or barring direction from Buyer, the more stringent procedure shall govern). Supplier shall use all reasonable efforts to avoid any interference with Buyer's operations. Supplier shall cause the Energy to meet the Power Quality Standards at all times, and shall operate the Facility consistent with WECC, NERC, Buyer, Electric System Authority, Governmental Authority and Transmission Provider requirements.
- 8.9 Operation and Maintenance Agreement. No later than one hundred eighty (180) days prior to the Commercial Operation Date, if Supplier intends to subcontract any aspect of the operation of the Facility, Supplier shall provide a copy of any proposed agreement between Supplier and such sub-operator which requires the sub-operator to operate the Facility in accordance with the terms hereof which shall be attached to this Agreement as Exhibit 15. Supplier shall also provide a certified copy of a certificate warranting that the sub-operator is a corporation, limited liability company or partnership in good standing with the State in which the Facility is located, which shall be attached to this Agreement as part of Exhibit 15. Buyer shall have fifteen (15) days in which to notify Supplier of its objection to any proposed

sub-operator, in which case Supplier shall not subcontract with such proposed sub-operator.

- 8.10 Right to Review. Buyer shall have the right to review during normal business hours the relevant books and records of Supplier to the extent reasonably necessary to confirm the accuracy of anything relating to this Agreement. Buyer is under no obligation to exercise any of these review rights. Buyer shall have no liability to Supplier for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to the Facility or this Agreement.
- 8.11 Undertaking of Agreement; Professionals and Experts. Supplier has engaged those professionals or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts, including engineers, attorneys or accountants, that Supplier may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Supplier. In entering into this Agreement and the undertaking by Supplier of the obligations set forth herein, Supplier has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Buyer in connection with the transactions contemplated by this Agreement.

9. EMERGENCY

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

with the requirements of this Agreement due to an Emergency or Force Majeure, except to the extent arising out of a Buyer breach of this Agreement.

10. CURTAILMENT

- 10.1 Compliance. Supplier shall obey all orders for curtailment of Energy by the Transmission Provider or any Electric System Authority.
- 10.2 Curtailments. Without limiting Section 10.1, Buyer shall not be obligated to purchase, receive, pay for or pay any damages associated with compliance or curtailment of Energy by Supplier made in response to any orders for curtailment provided for in Section 10.1, including in respect of Net Energy (or associated Renewable Energy Benefits) not delivered to the Delivery Point for any reason, including due to any of the following: (a) the interconnection between the Facility and the Transmission System is disconnected, suspended or interrupted, in whole or in part; (b) the Transmission Provider, Electric System Authority or Market Operator directs a general curtailment, reduction or re-dispatch of generation in the area (which would include the Net Energy), for any reason, even if such curtailment, reduction or re-dispatch directive is carried out by Buyer, which may fulfill such directive by acting in its sole discretion; (c) if Buyer curtails or otherwise reduces the Net Energy in order to meet its obligations to the Transmission Provider, Electric System Authority or Market Operator to operate within system limitations; (d) the Facility's Energy is not received because the Facility is not fully integrated or synchronized with the Transmission System; or (e) an event of Force Majeure prevents either Party from delivering or receiving Net Energy at the Delivery Point.
- 10.3 Curtailed Product. The amount of Net Energy curtailed under Sections 10.1 or 10.2 ("Curtailed Product") shall be reasonably determined by Supplier after the curtailment has ended based upon the Net Energy that could have been generated and delivered to Buyer at the Delivery Point consistent with the provisions of this Agreement, but that was not generated and delivered solely as a result of such curtailment. Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm the amount of the Curtailed Product that was not generated as a result of the curtailment. During any such period of curtailment, Supplier shall not produce Energy (to the extent curtailed by Transmission Provider) or sell Product to any third party. Curtailed Product shall constitute Excused Product for purposes of calculating a Shortfall or PC Shortfall. Under no circumstance shall the provisions of this Section 10.3 apply to a curtailment of the Facility based upon an Emergency with respect to the Facility.
- 10.4 Economic Curtailment.
- 10.4.1 Buyer shall be permitted to require curtailment of Energy for economic reasons or otherwise refuse to take Product for economic reasons in accordance with the provisions of this Section 10.4 ("Economic Curtailment"). Buyer shall provide notice to Supplier of any Economic

Curtailment, including the Delivery Hours in which Energy is to be curtailed.

- 10.4.2 Supplier shall obey all orders for Economic Curtailment issued by Buyer in accordance with Section 10.4.1. The amount of Net Energy curtailed under this Sections 10.4.2 (“Economic Curtailed Product”) shall be reasonably determined by Supplier after the Economic Curtailment has ended based upon the Net Energy that would have been generated and delivered to Buyer at the Delivery Point consistent with the provisions of this Agreement, but that was not generated and delivered solely as a result of the Economic Curtailment. Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm the amount of the Economic Curtailed Product that was not generated as a result of the Economic Curtailment. During any period of Economic Curtailment, Supplier shall not produce Energy (to the extent curtailed by Buyer) or sell Product to any third party. Economic Curtailed Product shall constitute Excused Product for purposes of calculating a Shortfall or PC Shortfall. Under no circumstance shall the provisions of this Section 10.4.2 apply to a curtailment of the Facility based upon an Emergency with respect to the Facility.
- 10.4.3 For the avoidance of doubt, in no event shall curtailment of Energy pursuant to Section 10.3 be treated as Economic Curtailed Product.
- 10.5 Network Resource Designation. Within sixty (60) days after the Effective Date, Buyer will submit an application to Transmission Provider to designate the Facility as a Network Resource. Supplier will provide all information related to the Facility required for such application within thirty (30) days after the Effective Date. Buyer will provide a copy of such application to Supplier.

11. PLANNED OUTAGES

- 11.1 Approvals. Supplier shall request and obtain Buyer’s prior written approval, which approval shall not be unreasonably withheld, before conducting any non-forced outage of the Facility or reducing the capability of the Generating Facility to deliver the Supply Amount (each such reduction or outage, a “Planned Outage”) so as to minimize the impact on the availability of the Facility. Supplier shall only schedule Planned Outages during the months of March, April, October and November, unless otherwise approved by Buyer, and as may be otherwise restricted by Law.
- 11.2 Schedules. Planned Outages will be scheduled and conducted in accordance with the following:
 - 11.2.1 Within ninety (90) days prior to the Commercial Operation Date and on or before October 1 of each Contract Year, Supplier shall provide Buyer with a schedule of proposed Planned Outages for the remainder of the year or upcoming Contract Year, as applicable. The proposed schedule will designate the Delivery Hours and amount (in MW) in which the Energy will

be reduced in whole or in part by the proposed Planned Outages. Each proposed schedule shall include all applicable information, including the following: the month, day and Delivery Hour each requested outage will begin and conclude, the facilities impacted, the purpose of the requested outage, and any other relevant information. The total combined Delivery Hours of Planned Outages in any Contract Year shall not exceed four percent (4%) of the MWhs comprising the Annual Supply Amount (prorated for the Stub Period, if any) unless otherwise approved by Buyer.

- 11.2.2 Buyer shall promptly review Supplier's proposed schedule of Planned Outages and either require modifications or approve the proposed schedule within thirty (30) days of Buyer's receipt of such schedule. If Buyer requires modifications to the proposed schedule, then Supplier shall promptly circulate a revised schedule of Planned Outages to Buyer consistent with Buyer's requested modifications. Product not delivered to Buyer during periods of Planned Outages, up to the MW specified, (a) will comprise Excused Product to the extent such Planned Outages are conducted in accordance with the Planned Outage schedule approved by Buyer in accordance with this Article 11, and (b) will not comprise Excused Product to the extent any outage period or MW exceed that set forth in the Planned Outage schedule approved by Buyer in accordance with this Article 11, or is not approved by Buyer. Each Party shall make reasonable efforts to accommodate any proposed revisions by the other Party to the approved Planned Outage schedule.
- 11.2.3 Regardless of approval of a Planned Outage, Supplier shall not start a Planned Outage on the Facility without confirming the approved Planned Outage with Buyer's Operating Representative five (5) Business Days prior to the start of such Planned Outage.
- 11.2.4 If following a notice pursuant to Section 11.2.3, Buyer requests that Supplier not undertake an approved Planned Outage as scheduled, for reasons other than Force Majeure or Emergency, then Supplier may promptly deliver to Buyer a written reasonable estimate of the costs expected to be incurred as a result of Supplier not undertaking the Planned Outage as scheduled. If Buyer agrees to the estimated costs, then Supplier shall not undertake the Planned Outage, and Buyer shall reimburse Supplier for its documented out-of-pocket costs actually incurred by Supplier in connection with not undertaking such Planned Outage (not to exceed the written estimated costs prepared by Supplier and delivered to Buyer). Any Planned Outage that is not instituted pursuant to this Section 11.2.4 will be rescheduled to occur in the same Contract Year in which it was originally scheduled, in accordance with Section 11.2.2.

12. REPORTS; OPERATIONAL LOG

- 12.1 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters or other written communications to or from any

Governmental Authority asserting or indicating any violation of Laws which relate to Supplier or construction, operation or maintenance of the Facility. Supplier shall keep Buyer apprised of the status of any such matters.

- 12.2 Notification of Facility Regulatory Status. Supplier shall notify Buyer of the regulatory status of the Facility as an EWG or QF no later than ninety (90) days prior to the Operation Date, and will provide Buyer with evidence documenting receipt of the required Governmental Approvals related to such designation (as such approvals are set forth in Exhibit 10). Following the Operation Date, Supplier shall notify Buyer, as soon as practicable, of any changes in regulatory status of the Facility, and will provide Buyer with evidence documenting receipt of the required Governmental Approvals related to such changed regulatory status (as such approvals are set forth in Exhibit 10) and reasonable support data requested by Buyer.
- 12.3 Notices of Change in Facility. In addition to any consent required pursuant to Section 8.7, Supplier shall provide notice to Buyer as soon as practicable prior to any temporary or permanent change to the performance, operating characteristics, or major generation components (such as turbines, generators, inverters, solar panels or similar equipment, as applicable) of the Facility. Such notice shall describe any changes, expected or otherwise, to the Expected Nameplate Capacity Rating, generating capability, the rate of production and delivery of Net Energy and other Product, interconnection and transmission issues, and any additional information requested by Buyer.
- 12.4 Project Reports and Project Review Meetings.
- 12.4.1 Prior to the Commercial Operation Date. Prior to the Commercial Operation Date, Supplier shall provide to Buyer a monthly project report, which shall include the following: status in obtaining Project Milestones, including level one schedule; progress in obtaining any Governmental Approvals in connection with achieving the Commercial Operation Date; and a discussion of any foreseeable disruptions or delays. The monthly project reports will be provided to Buyer no later than ten (10) Business Days after expiration of the previous month. The Parties shall conduct meetings every six (6) months (or more frequently if requested by Buyer) to review this data and any information related to Supplier's completion of or progress toward the Project Milestone activities listed in Exhibit 6. In addition to any other requirements for Commercial Operation under this Agreement, Supplier shall: (a) provide notice to Buyer of its best estimate of the projected Operation Date, Commercial Operation Date and the PUCN Approval Date; (b) notify Buyer as soon as Supplier becomes aware of any changes in such projected dates; and (c) coordinate with Buyer regarding the commencement of operation of the Facility. In addition to the foregoing, Supplier will provide Buyer with such other operational or technical data as Buyer may reasonably request and as may be reasonably necessary to determine Supplier's compliance with its obligations hereunder and its progress toward Commercial Operation.

- 12.4.2 After Commercial Operation Date. After the Commercial Operation Date, Supplier shall provide to Buyer within thirty (30) days of the end of each quarter throughout the Term, in electronic format, a report which shall include all pertinent information in connection with the Facility, including: (a) all weather data from any collection device measuring data with respect to the Facility (such as a met tower or similar measurement device); (b) any available site condition reports; (c) all reporting information maintained in the operational log and any other SCADA data from the Facility; and (d) any reports pertaining to the Facility resource and such other data and reports as may be reasonably requested by Buyer and which should be maintained by Supplier in accordance with Good Utility Practice for the relevant technology. In addition, Supplier shall provide remote access to Buyer for the Facility's operations and maintenance data for purposes of Buyer integrating such data into Buyer's Monitoring & Diagnostics center.
- 12.4.3 Operations Log. Supplier shall maintain in accordance with Good Utility Practice an operations log, which shall include: (a) all Planned Outages and unplanned outages, alarms, circuit breaker trip operations, partial deratings of equipment, mechanical impairments defects or unavailability with respect to generating equipment; (b) the cause (including any root cause analysis undertaken) and remediation undertaken by Supplier with respect to the events listed in (a); (c) the Delivered Amounts for the Stub Period and each Contract Year; and (d) any other significant event or information related to the operation of the Facility or the delivery of Net Energy or other Product. The operations logs shall be available for inspection by Buyer upon forty-eight (48) hours' notice together with all data maintained by Supplier as support for such logs. Supplier shall be responsible for maintaining sufficient evidentiary support in order to document the information contained in such operation logs.
- 12.5 Financial Information. Within thirty (30) days of Buyer's written request, Supplier shall provide Buyer with copies of Supplier's most recent quarterly and annual unaudited financial statements, which financial statements shall be prepared in accordance with generally accepted accounting principles.
- 12.6 Information to Governmental Authorities. Supplier shall, promptly upon written request from Buyer, provide Buyer with data reasonably available to Supplier related to the construction, operation and maintenance of the Facility (redacted for data that is reasonably confidential or proprietary to Supplier) reasonably required by Buyer or an Affiliate thereof for reports to, and information requests from, any Governmental Authority, or any intervenor or party in any rate case or regulatory proceeding of Buyer or an Affiliate thereof. In addition, Supplier shall provide to Buyer copies of all submittals to a Governmental Authority directed by Buyer and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Supplier's knowledge after due inquiry. Supplier shall use best efforts to provide this information to Buyer with

sufficient advance notice to enable Buyer to review such information and meet any submission deadlines imposed by the requesting Governmental Authority.

- 12.7 Accounting Standards. If Buyer or one of its Affiliates determines that it may hold a variable interest in Supplier under the Accounting Standards Codification (“ASC”) 810, Consolidation of Variable Interest Entities, or requirements of Law, but it lacks the information necessary to make a definitive conclusion, Supplier hereby agrees to provide, upon Buyer’s written request, financial and ownership information reasonably available to Supplier so that Buyer or its Affiliate may confirm whether a variable interest does exist under ASC 810 or requirements of Law. If Buyer or its Affiliate determines that, it holds such a variable interest in Supplier, Supplier hereby agrees to provide, upon Buyer’s written request, financial and other information to Buyer or its Affiliate that is reasonably available to Supplier so that Buyer may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 or applicable Law. Supplier shall have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information. Information provided pursuant to this Section 12.7 is subject to Buyer’s rights to disclose such information pursuant to this Agreement and pursuant to any applicable requirements of Law.
- 12.8 Documents to Governmental Authorities. Supplier shall promptly provide to Buyer a copy of any statement, application, and report or any document with any Governmental Authority relevant to operation and maintenance of the Facility under this Agreement.
- 12.9 Environmental Information. Supplier shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under any Required Facility Document listed in Exhibit 12 or otherwise in effect with respect to the Facility. Supplier shall further provide Buyer with information relating to environmental impact mitigation measures it is taking in connection with the Facility’s construction or operation that are required by any Governmental Authority. As soon as it is known to Supplier, Supplier shall disclose to Buyer, the extent of any actual or alleged violation of any Environmental Laws arising out of the construction or operation of the Facility, or the actual or alleged presence of Environmental Contamination at the Facility or on the Project Site, or occurrence of any enforcement, legal or regulatory action or proceeding relating to the foregoing.

13. COMMUNICATIONS

- 13.1 Supplier’s Operating Representative. At least one of Supplier’s Operating Representatives shall be available to address and make decisions on all operational matters under this Agreement on a twenty-four (24) hour per day, seven (7) day per week basis. Supplier shall, at its expense, provide a protocol with Buyer’s Operating Representative at Buyer’s operations center and with Buyer’s scheduling personnel, as listed on Exhibit 4, to maintain communications between personnel

operating the Facility and Buyer's Operating Representative, Buyer's schedulers and Electric System Authorities at all times.

13.2 Communications. In connection with meeting its obligations pursuant to this Article 13, Supplier shall provide at its expense:

13.2.1 For the purposes of telemetering, a telecommunications circuit from the Facility to Buyer's operations center, or other readily accessible real-time performance monitoring (e.g., a web-based performance monitoring system);

13.2.2 Two (2) dedicated T1 lines for purposes of accessing Buyer's metering equipment and for communications with Buyer's operations center; and

13.2.3 Equipment to transmit to and receive facsimiles and email from Buyer and the Balancing Authority Area Operator, including cellular telephones.

14. SCHEDULING NOTIFICATION

14.1 Scheduling Notification. Supplier shall provide to Buyer's Operating Representative notices containing information including Supplier's good faith daily and hourly forecast of the Delivered Amount, Planned Outages, Derating, other outages and similar changes that may affect the Delivered Amount and the availability of Product otherwise, in accordance with the Availability Notice procedures in Section 14.2.

14.2 Availability Notice Procedures.

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

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

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

14.2.4 In the event of a Derating of the Facility, Supplier shall provide: (a) the extent, if any, to which the Derating is attributable to a Planned Outage; (b)

the magnitude of the Derating; (c) the Delivery Hours during which the Derating is expected to apply; and (d) the cause of the Derating.

15. COMPLIANCE

- 15.1 Laws. Each Party shall comply with all relevant Laws in connection with the performance of its obligations under this Agreement. Subject to Section 3.5, Supplier shall comply with all Laws to ensure that, the Generating Facility is at all times a Renewable Energy System and Supplier is at all times in compliance with all requirements of a renewable energy generator as set forth in the Renewable Energy Law, and shall, at its sole expense, maintain in full force and effect all relevant material Governmental Approvals required for the maintenance of the Facility and the performance of its obligations under this Agreement, and Supplier shall be responsible for any costs associated with any obligations imposed on Supplier under the Clean Power Plan, including for obtaining, at its sole cost, any allowances required by Supplier under applicable Law pertaining to the Clean Power Plan, in a quantity or amount sufficient to support Supplier's compliance with its obligations set forth in this Agreement. Each Party and its representatives shall comply with all relevant requirements of each Electric System Authority, Transmission Provider and each Governmental Authority to ensure the safety of its employees and the public.
- 15.2 Good Utility Practice. Each of Buyer and Supplier shall perform, or cause to be performed, its obligations under this Agreement in all material respects in accordance with Good Utility Practice.
- 15.3 Interconnection Agreement. Supplier shall operate the Facility in accordance with the IA and to the extent there is a conflict between this Agreement and the IA, the IA shall prevail.

16. APPROVALS

- 16.1 Condition Precedent. Notwithstanding any provision to the contrary contained in this Agreement, each Party's performance of its respective obligations under Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17 and 25 of this Agreement is subject to: (a) Buyer obtaining the PUCN Approval described in Section 16.2 before the PUCN Approval Deadline and in form and substance satisfactory to Buyer in its sole discretion; and (b) the Energy Choice Initiative failing to pass a second consecutive vote by a majority of the Nevada voters in the State of Nevada on or before the Energy Choice Initiative Deadline, all in accordance with this Article 16. For purpose hereof, "Energy Choice Initiative Deadline" means December 28, 2018.
- 16.2 PUCN Approval. Within one hundred twenty (120) days after the Effective Date and in accordance with the requirements of Law, Buyer shall submit this Agreement to the PUCN for approval ("PUCN Approval") consisting of:

16.2.1 A determination that the terms and conditions of this Agreement are just and reasonable; and

16.2.2 A determination that the costs of purchasing Product under this Agreement are prudently incurred and that the Buyer may recover all just and reasonable costs of Product purchased under this Agreement.

16.3 Failure to Obtain PUCN Approval; Conditions of PUCN Approval. If the PUCN fails to grant the PUCN Approval on or before the PUCN Approval Deadline or grants the PUCN Approval on or before the PUCN Approval Deadline, but in form and substance not acceptable to Buyer in its sole discretion, then within thirty (30) days after the PUCN Approval Deadline or the date PUCN grants the PUCN Approval, as the case may be, Buyer shall have the right to terminate this Agreement upon ten (10) Business Days prior written notice to Supplier. Under no circumstances shall either Party have any liability to the other Party due to the failure of the PUCN to grant PUCN Approval by the PUCN Approval Deadline or the inclusion of conditions to the PUCN Approval which are unacceptable to Buyer.

16.4 [reserved]

16.5 [reserved]

16.6 Energy Choice Initiative. If the Energy Choice Initiative should pass a second consecutive vote by a majority of the Nevada voters in the State of Nevada on or before the Energy Choice Initiative Deadline (the “Energy Choice Initiative Vote”), then within thirty (30) days after the Energy Choice Initiative Deadline or the Energy Choice Initiative Vote, as the case may be, Buyer shall have the right to terminate this Agreement upon ten (10) Business Days prior written notice to Supplier. Under no circumstances shall either Party have any liability to the other Party due to the Energy Choice Initiative Vote.

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

17. SECURITY

- 17.1 Development Security. As a condition of Buyer's execution of and continuing obligations under this Agreement, Supplier shall provide to Buyer, as security for the performance of Supplier's obligations hereunder, either: (a) a letter of credit from a Qualified Financial Institution substantially in the form attached hereto as Exhibit 17; or (b) a cash deposit, in either case, in an amount equal to [REDACTED] [REDACTED] (the "Development Security"). The Development Security shall be posted within five (5) Business Days after the Effective Date. Upon the Regulatory Out Expiration Date, the Development Security shall increase to an amount equal to [REDACTED]. For purposes hereof, the "Regulatory Out Expiration Date" means the date on which Buyer ceases to have any rights to terminate this Agreement under any of Sections 16.3 and 16.6. The revised Development Security shall be posted within five (5) Business Days after Supplier's receipt of Notice from Buyer of the occurrence of the Regulatory Out Expiration Date and be maintained until fifteen (15) Business Days after the Commercial Operation Date. Buyer shall have the right to draw upon the Development Security, at Buyer's sole discretion: (i) as a non-exclusive remedy available to Buyer under Article 24; (ii) in the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline and fails to pay Daily Delay Damages as provided in Section 8.5.1; (iii) if Supplier fails to make any payments owing under this Agreement; or (iv) if Supplier fails to reimburse Buyer for costs, including Replacement Costs, PC Replacement Costs and Penalties, that Buyer has incurred or may incur as a result of Supplier's failure to perform its obligations under this Agreement. Unless this Agreement is terminated, any such drawing on the Development Security by Buyer shall give rise to an obligation of Supplier to replenish the Development Security to its required amount within two (2) Business Days of the drawing. In the event that no amounts are due and owing by Supplier to Buyer under this Agreement and Supplier has provided the Operating Security to Buyer, the Development Security shall be released to Supplier upon the earlier of (x) termination of this Agreement in accordance with its terms or (y) on the fifteenth (15th) Business Day after the Facility achieves Commercial Operation. With the consent of Buyer, Supplier may apply and maintain the Development Security as a portion of Operating Security required to be provided by Supplier pursuant to Section 17.2.
- 17.2 Operating Security. As a condition to achieving Commercial Operation, Supplier shall provide to Buyer, as security for the performance of Supplier's obligations hereunder, either: (a) a letter of credit from a Qualified Financial Institution substantially in the form attached hereto as Exhibit 17; or (b) a cash deposit, in each of (a) and (b), in an amount equal to [REDACTED] [REDACTED] or (c) a guarantee substantially in the form of Exhibit 20 if the guarantor meets Buyer's minimum credit requirements as determined by Buyer in its sole and absolute discretion (the "Operating Security"). The Operating Security shall be posted no later than five (5) Business Days prior to the Commercial Operation Date. Buyer shall have the right to draw upon the Operating Security, at Buyer's sole discretion: (1) as a non-exclusive remedy available to Buyer in the event this Agreement is terminated under Article 24; (2) in the event Supplier fails to make any payments owing under this Agreement; or (3) if Supplier fails to reimburse Buyer for costs, including

Replacement Costs, PC Replacement Costs and Penalties that Buyer has incurred or may incur as a result of Supplier's failure to perform its obligations under this Agreement. Unless this Agreement is terminated, any such drawing on the Operating Security by Buyer shall give rise to an obligation of Supplier to replenish the Operating Security to its original amount within five (5) Business Days. In the event that no amounts are due and owing by Supplier to Buyer under this Agreement, the Operating Security shall be released to Supplier upon the fifteenth (15th) Business Day after the earlier of (x) termination of this Agreement in accordance with its terms or (y) the expiration of the Term.

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

or Operating Security pursuant hereto in a timely manner shall constitute an Event of Default pursuant to Article 24.

- 17.6 No Interest on Supplier Security. Supplier shall not earn or be entitled to any interest on any security provided pursuant to this Article 17, including any cash amounts deposited.
- 17.7 Grant of Security Interest. To secure its obligations under this Agreement, Supplier hereby grants to Buyer, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all Development Security or Operating Security, as the case may be, posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Supplier agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such performance assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Development Security or Operating Security, as applicable, including any such rights and remedies under Law then in effect; (b) exercise its right of setoff against any and all property of Supplier, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding letter of credit issued for its benefit; and (d) liquidate all Development Security or Operating Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever by Supplier, including any equity or right of purchase or redemption by Supplier. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Supplier's obligations under the Agreement (Supplier remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.
- 17.8 Waiver of Buyer Security. Supplier hereby waives any and all rights it may have, including rights at Law or otherwise, to require Buyer to provide financial assurances or security (including cash, letters of credit, bonds or other collateral) in respect of its obligations under this Agreement.
- 17.9 Security is Not a Limit on Supplier's Liability. The security contemplated by this Agreement: (a) constitutes security for, but is not a limitation of, Supplier's obligations hereunder; and (b) shall not be Buyer's exclusive remedy for Supplier's failure to perform in accordance with this Agreement.

18. INDEMNIFICATION

- 18.1 Indemnification for Losses. Each Party to this Agreement (the "Indemnifying Party") shall indemnify, defend and hold harmless, on and after state and federal Tax basis, the other Party, its Affiliates, and each of their officers, directors,

employees, attorneys, agents and successors and assigns (each an “Indemnified Party”) from, for and against any and all Losses arising out of, relating to, or resulting from the Indemnifying Party’s breach, or performance or non-performance of its obligations under this Agreement, including the Indemnifying Party’s negligence and willful misconduct (including reasonable attorneys’ fees and costs); provided, however, that no Party shall be indemnified hereunder for any Loss to the extent resulting from its own gross negligence, fraud or willful misconduct. Supplier shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Supplier’s breach of the IA, negligence or willful misconduct.

18.1.1 In furtherance of the foregoing indemnification and not by way of limitation thereof, the Indemnifying Party hereby waives any defense it otherwise might have against the Indemnified Party under applicable workers’ compensation Laws.

18.1.2 In claims against any Indemnified Party by an agent of the Indemnifying Party, or anyone directly or indirectly employed by them or anyone for whose acts the Indemnifying Party may be liable, the indemnification obligation under this Article 18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or a subcontractor under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts.

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

18.3 Indemnification Procedures.

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

18.3.2 In any action or proceeding brought against an Indemnified Party by reason of any claim indemnifiable hereunder, the Indemnifying Party may, at its sole option, elect to assume the defense at the Indemnifying Party’s

expense, and shall have the right to control the defense thereof and to determine the settlement or compromise of any such action or proceeding. Notwithstanding the foregoing, an Indemnified Party shall in all cases be entitled to control its own defense in any action if it:

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

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

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

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

19. LIMITATION OF LIABILITY

19.1 Responsibility for Damages. Except where caused by the other Party's breach or negligence or non-performance of its obligations under this Agreement, each Party shall be responsible for all physical damage to or destruction of the property, equipment and/or facilities owned by it, and each Party hereby releases the other Party from any reimbursement for such damage or destruction.

19.2 Limitation on Damages. To the fullest extent permitted by Law and notwithstanding any other provisions of this Agreement to the contrary, except for Replacement Costs, PC Replacement Costs or payment made by either Party to satisfy Penalties or payments owing under Sections 3.5, 8.4, 8.5, 17.1, 17.2 and 19.1, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement (unless due to the willful or intentional breach of this Agreement by such Party, in which case the limitation shall not apply). In addition, this limitation on damages shall not apply with respect to claims brought by third parties for which a Party is entitled to indemnification under this Agreement.

19.3 Survival. The provisions of this Article 19 shall survive the termination or expiration of this Agreement.

20. FORCE MAJEURE

- 20.1 Excuse. Subject to Section 20.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product) if such delay or failure is due to an event of Force Majeure.
- 20.2 Definition. “Force Majeure” or “an event of Force Majeure” means an event that: (a) is not reasonably anticipated as of the Effective Date; (b) is not within the reasonable control of the Party affected by the event; (c) is not the result of the affected Party’s negligence or failure to act; and (d) could not be overcome by the affected Party’s use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the requirements set forth in the preceding sentence): acts of God; civil disturbance; sabotage; strikes not attributable to Supplier’s actions; lock-outs not attributable to Supplier’s actions; work stoppages not attributable to Supplier’s actions; action or restraint by court order or Governmental Authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such action or restraint).
- 20.3 Exclusions. Notwithstanding the foregoing, none of the following shall constitute Force Majeure:
- 20.3.1 Economic hardship of either Party, including lack of money;
 - 20.3.2 The non-availability or reduced availability of the resource supply to generate electricity from the Generating Facility, including due to weather, high or low temperatures or climate conditions;
 - 20.3.3 A Party’s failure to obtain any Governmental Approval from a Governmental Authority;
 - 20.3.4 A Party’s failure to meet a Project Milestone, except to the extent it is caused by an event of Force Majeure;
 - 20.3.5 The imposition of costs or Taxes on a Party;
 - 20.3.6 Supplier’s failure to obtain, or perform under, the IA, or its other contracts and obligations to Transmission Provider unless due to a Force Majeure event;
 - 20.3.7 Supplier’s ability to sell, or Buyer’s ability to purchase energy, PCs (and equivalent rights in any other jurisdiction), Renewable Energy Benefits, or Capacity Rights at a more advantageous price than is provided hereunder;

- 20.3.8 Any breakdown or malfunction of the Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure;
 - 20.3.9 Delay or failure of Supplier to obtain or perform any Required Facility Document unless due to a Force Majeure event;
 - 20.3.10 Any delay, alleged breach of contract, or failure by the Transmission Provider unless due to a Force Majeure event;
 - 20.3.11 Maintenance upgrade or repair of any facilities or right of way corridors whether performed by or for Supplier, or other third parties (except for repairs made necessary as a result of an event of Force Majeure); or
 - 20.3.12 The increased cost of electricity, equipment, steel, labor, or transportation.
- 20.4 Conditions. In addition to the conditions set forth in Section 20.2, a Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:
- 20.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement (which notice, in the case of Supplier, shall be provided within two (2) Business Days following obtaining actual knowledge of such Force Majeure event);
 - 20.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;
 - 20.4.3 Reasonably expeditiously takes action to correct or cure the Force Majeure event excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event; provided, however, that nothing herein requires a Party to settle a strike or other labor dispute;
 - 20.4.4 Exercises all reasonable efforts to mitigate or limit damages to the other Party resulting from the Force Majeure event; and
 - 20.4.5 Provides prompt notice to the other Party of the cessation of the Force Majeure event giving rise to its excuse from performance.

21. DISPUTES

- 21.1 Dispute or Claim. Any cause of action, claim or dispute which either Party may have against the other Party arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Laws that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity hereof ("Dispute") shall be submitted in writing to the other Party. The written submission

of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.

- 21.2 Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.
- 21.3 Informal Negotiation. The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the Operating Representatives or Contract Representatives and senior management of each Party. If the Parties fail to resolve any Dispute through informal negotiations within thirty (30) days after the Dispute is submitted in writing to the other Party in accordance with Section 21.1, then either Party may exercise their rights at equity or law to resolve such Dispute.
- 21.4 Jurisdiction, Venue. Each Party irrevocably: (a) submits to the exclusive jurisdiction of the federal and state courts located in the County of Washoe, State of Nevada; (b) waives any objection which it may have to the laying of jurisdiction or venue of any proceedings brought in any such court; and (c) waives any claim that such proceedings have been brought in an inconvenient forum.
- 21.5 Recovery of Costs and Attorneys' Fees. In the event of a Dispute arising from or relating to this Agreement, whether or not an action is commenced in any court to enforce any provision or for damages by reason of any alleged breach of this Agreement, the prevailing Party will be entitled to recover from the other Party all costs and attorneys' fees reasonably incurred in resolving the Dispute. For purposes hereof, the "prevailing" Party need not prevail on every issue involved in the Dispute, but only on the main issue giving rise to the Dispute.
- 21.6 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

22. NATURE OF OBLIGATIONS

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

23. ASSIGNMENT

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

23.1 Buyer Assignment. Buyer may, without the consent of Supplier, assign this Agreement and all of its rights and obligations under this Agreement, if such assignment or delegation is made to: (a) Sierra Pacific Power Company; (b) any successor to Buyer, provided that such successor is a public utility holding a certificate of public convenience and necessity granted by the PUCN pursuant to NRS Chapter 704, where such assignment does not occur by operation of Law; (c) a Person (other than a natural person) providing retail electric service in Nevada which meets the Minimum Credit Rating or provides credit assurance or a guarantee from a party that meets the Minimum Credit Rating; (d) a wholesale electric provider which meets the Minimum Credit Rating or provides credit assurance or a guarantee from a party that meets the Minimum Credit Rating; (e) a Person (other than a natural person) whose Credit Rating, as published by either Relevant Rating Agency, is equal or superior to the Minimum Credit Rating as of the time of assignment, and provided such assignment would not have a material adverse regulatory consequence on Supplier; or (f) a Person (other than a natural person) as otherwise required by Law, provided that the Credit Rating of such Person (other than a natural person), as published by either Relevant Rating Agency, is equal or superior to the Minimum Credit Rating as of the time of assignment, and provided such assignment would not have a material adverse regulatory consequence on Supplier. Buyer shall provide Supplier with prior written notice of any assignment proposed pursuant to this Section 23.1 and as a condition to the effectiveness thereof, Buyer shall have delivered to Supplier assignment documentation by which Buyer has assigned, and assignee has assumed, all of Buyer's rights and obligations under this Agreement.

23.2 Supplier Assignment. Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder), (A) permit the transfer or assignment of a Controlling Interest in Supplier to any of Supplier's Affiliates or (B) transfer or assign this Agreement to any of Supplier's Affiliates in connection with a transfer of the Facility to such Affiliate or a corporate reorganization between Supplier and its Affiliates, so long as the purposes of the ROFO in Article 6 are not frustrated by any such a transfer or assignment if also involving a Restricted Transaction; provided that Supplier provides Buyer prior notice of any such transfer or assignment of a Controlling Interest or transfer or assignment of this Agreement and (i) in the case of a transfer or assignment of this Agreement to an Affiliate, the Credit Rating of such Affiliate is equal to or superior to the Credit Rating of Supplier as of the Effective Date, as determined by Buyer in its reasonable discretion, (ii) in all cases, the Development Security or Operating Security, as applicable, is maintained without change due to such transfer or assignment or is

replaced with Development Security or Operating Security, as applicable, in accordance with the requirements of Article 17, and (iii) in the case of a transfer or an assignment of this Agreement to an Affiliate, such Affiliate enters into an assignment and assumption agreement, in form and substance satisfactory to Buyer, pursuant to which such Affiliate assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement. Supplier agrees that it will provide written notice to Buyer (and, if required, the PUCN Regulatory Operations Staff, and the State of Nevada Attorney General's Bureau of Consumer Protection) of any transfer or assignment of this Agreement by Supplier to an Affiliate pursuant to this Section 23.2, together with information supporting the permissible nature of the transfer or assignment in accordance with the requirements of this Section 23.2, no less than five (5) Business Days prior to the effective date of any such transfer or assignment.

- 23.3 Liability After Assignment. A Party's assignment or transfer of rights or obligations pursuant to this Article 23 (other than Section 23.2) of this Agreement shall relieve such Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment, provided that such transferee enters into an assignment and assumption agreement, in form and substance satisfactory to the other Party, pursuant to which such transferee assumes all of the assigning or transferring Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 23.4 Transfers of Ownership. Subject to the provisions of Article 6, Supplier shall not directly or indirectly sell, transfer, assign or otherwise dispose of its ownership interest in the Facility to any third party absent: (a) a transfer of this Agreement to such third party; (b) Supplier entering into an assignment and assumption agreement, in form and substance satisfactory to Buyer, with such third party pursuant to which such third party assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement; (c) Buyer's prior written approval, not to be unreasonably withheld, of such third party; and (d) such third party being a Qualified Transferee. This Section 23.4 shall not apply or restrict any sale, transfer, assignment or disposal of the Facility in accordance with the provisions of Section 23.2. This Section 23.4 shall also not apply to any transfer that complies with the ROFO provisions of Section 6.1, provided that such transfer is to a Qualified Transferee.
- 23.5 Upper Tier Transfers. Subject to the following sentence, Supplier shall not permit or suffer any direct or indirect change in the equity ownership of Supplier (whether through a single transaction or a series of transactions over time) without Buyer's prior written approval, not to be unreasonably withheld, and then only (i) to a Qualified Transferee and (ii) after Supplier (or its applicable Affiliate) has provided Buyer rights of first offer in the manner set forth in the ROFO provisions of Section 6.1. This Section 23.5 shall not apply to (a) any Restricted Transaction(s) carried out in compliance with Section 6.1.1, (b) any transaction(s) involving Supplier's Affiliates carried out in compliance with Section 23.2, (c) any Supplier's Lenders Transactions (as such term is defined in Section 6.1.1) or (d) any direct or indirect change in the equity ownership of Supplier (whether through a single transaction

or a series of transactions over time) arising out of the direct or indirect change in the equity ownership of a Person that directly or indirectly owns equity interests in Supplier and also directly or indirectly owns assets other than the Project or equity interests in any entity(ies) other than Supplier.

- 23.6 Assignee Obligations with Respect to Granting a Security Interest. As a condition precedent to granting any Person a security interest in the Facility, Supplier shall (a) satisfy the requirements of Section 23.8 or (b) procure and deliver to Buyer an agreement, enforceable by Buyer and in form and substance satisfactory to Buyer, from each such Person to the effect that, if such Person forecloses on its security interest, (i) it will assume Supplier's obligations under and otherwise be bound by the terms of this Agreement, and (ii) it will not sell, transfer or otherwise dispose of its interest in the Facility to any Person other than in accordance with the provisions of this Article 23.
- 23.7 Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective permitted successors and permitted assigns.
- 23.8 Collateral Assignment by Supplier. Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder), transfer, pledge, encumber or collaterally assign this Agreement or the account, revenues or proceeds hereof to Supplier's Lenders in connection with any financing, including tax equity financing, or other financial arrangements for the Facility. In the event that Supplier intends to transfer, pledge, encumber or collaterally assign this Agreement to Supplier's Lenders, Supplier shall provide at least thirty (30) days' prior written notice thereof to Buyer, including the address of Supplier's Lenders. Any negotiation of documentation required in connection with a collateral assignment or other financing activity of Supplier shall be at the sole cost and expense of Supplier, and Supplier shall reimburse Buyer for all documented third-party and internal costs in connection with such activities. As a condition precedent to the effectiveness of any such transfer, pledge, encumbrance or collateral assignment to Supplier's Lenders, Buyer and Supplier and Supplier's Lenders shall have entered into a consent to collateral assignment agreement, which agreement shall be substantially in the form and substance of the Lender's Consent in Exhibit 19, including such revisions as may be reasonably requested by Supplier's Lenders.

24. DEFAULT AND REMEDIES

- 24.1 Events of Default. An event of default ("Event of Default") shall be deemed to have occurred with respect to a Party (the "Defaulting Party") upon the occurrence of one or more of the following events and expiration of any applicable Cure Period:
- 24.1.1 failure to comply with any of its material obligations under this Agreement (not otherwise specifically addressed below) or failure of any its representations or warranties in this Agreement to be true and correct in all material respects when made or deemed made;

- 24.1.2 failure to make timely payments due under this Agreement;
 - 24.1.3 failure to comply with the material requirements of any Electric System Authority, Transmission Provider or any Governmental Authority;
 - 24.1.4 in the case of Supplier, its failure at any time to qualify and maintain, subject to Section 3.5, the Generating Facility as a Renewable Energy System;
 - 24.1.5 in the case of Supplier, its failure to install, operate, maintain or repair the Facility in accordance in all material respects with Good Utility Practice;
 - 24.1.6 in the case of Supplier, unless excused by an event of Force Majeure, its failure to timely achieve: (a) any of the Critical Project Milestones (excluding Commercial Operation) before the scheduled date set forth in Exhibit 6; and (b) Commercial Operation by the Commercial Operation Deadline as set forth in Exhibit 6, after expiration of the applicable period for which Daily Delay Damages are owed by Supplier pursuant to Section 8.5.1;
 - 24.1.7 in the case of Supplier, its failure to comply with the provisions of Article 17 (including any replenishment requirement);
 - 24.1.8 in the case of Supplier, its failure to comply with the provisions of Article 23;
 - 24.1.9 in the case of Supplier, its failure to comply with the provisions of Article 27;
 - 24.1.10 in the case of Supplier, if Supplier: (a) becomes insolvent, files for or is forced into bankruptcy (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) days); (b) makes an assignment for the benefit of creditors; (c) is unable to pay its debts as they become due; or (d) is subject to a similar action or proceeding (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) days); and
 - 24.1.11 in the case of Supplier, if Supplier: (a) relinquished possession and control of all or substantially all of the Facility, other than pursuant to a transfer permitted under this Agreement; or (b) after commencement of the construction of the Facility, and prior to the Commercial Operation Date, completely ceases construction, testing, and inspection of the Facility for ninety (90) consecutive days, if not attributable to an Event of Default of, or request by Buyer, or an event of Force Majeure.
- 24.2 Duty/Right to Mitigate. Each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of its

obligations under this Agreement. For the purpose of this Section 24.2, commercially reasonable efforts by Supplier shall include maximizing the price for Product received by Supplier from third parties, including (if appropriate at the time) entering into an enabling agreement with one or more power marketers of nationally recognized standing to market such Product not purchased or accepted by Buyer during a period Buyer is a Defaulting Party and Supplier is entitled to sell such Product to third parties in accordance with the terms of this Agreement.

- 24.3 Cure Period. Other than for an Event of Default under Sections 24.1.6 or 24.1.10 for which there is no cure period, an Event of Default shall not be deemed to have occurred under Section 24.1, unless and until the Defaulting Party shall: (a) for purposes of Section 24.1.2, 24.1.7, 24.1.8, 24.1.9, and 24.1.11, had a period of ten (10) Business Days from the date the applicable payment or performance was due; and (b) for purposes of all other Events of Default described in Section 24.1 (other than Sections 24.1.2, 24.1.6, 24.1.7, 24.1.8, 24.1.9, 24.1.10 or 24.1.11 which are addressed above), had a period of thirty (30) days from the date of receipt of written notice of the occurrence of any of the Events of Default described in Section 24.1 (each of the cure periods in Section 24.3(a) and (b), a “Cure Period”) to cure such potential Event of Default; provided that such thirty (30)-day period may be extended for an additional reasonable period of time (not to exceed ninety (90) days) if: (i) the potential Event of Default is not reasonably capable of being cured within such thirty (30)-day period; (ii) such potential Event of Default is capable of being cured within an additional reasonable period of time (not to exceed ninety (90) days); and (iii) Supplier is diligently and continuously proceeding to cure such potential Event of Default.
- 24.4 Remedies. If an Event of Default is not cured by the Defaulting Party during the applicable Cure Period, if any, then the Non-Defaulting Party shall be entitled to all legal and equitable remedies that are not expressly prohibited by the terms of this Agreement, including termination of this Agreement as provided in Section 2.3, payment of damages, and in the case of Buyer, drawing upon the Development Security and the Operating Security.
- 24.5 Termination of Duty to Buy. If this Agreement is terminated because of an Event of Default by Supplier, neither Supplier nor any Affiliate of Supplier, nor any successor to Supplier with respect to the ownership of the Facility or the Project Site, may thereafter require or seek to require Buyer to make any purchases from the Facility or any electric generation facility constructed on the Project Site, under the Public Utility Regulatory Policies Act of 1978 or any other Law, for any periods that would have been within the Term had this Agreement remained in effect. Supplier, on behalf of itself and any other entity on whose behalf it may act, hereby waives its rights to require Buyer so to do.
- 24.5.1 Right of First Offer for Product. If Buyer terminates this Agreement in accordance with Section 2.3.1 due to a Supplier Event of Default, then neither Supplier nor Supplier’s Affiliates may sell, or enter into a contract to sell, Net Energy or any Product generated by, associated with or attributable to a generating facility that from time to time may be

constructed by Supplier or any Affiliate of Supplier on the Project Site installed at the Project Site to a party other than Buyer for a period of three (3) years following the effective date of such termination (“Restricted Period”). The foregoing prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than Buyer, Supplier or Supplier’s Affiliate provides Buyer with a written offer to sell the Net Energy or any Product to Buyer at the rate set forth in this Agreement and otherwise on terms and conditions materially similar to the terms and conditions set forth in this Agreement and Buyer fails to accept such offer within (A) forty-five (45) days after Buyer’s receipt of such offer if this Agreement had originally been terminated by Buyer after the commencement of construction of the Facility, and (B) one hundred twenty (120) days after Buyer’s receipt of such offer if this Agreement had originally been terminated by Buyer prior to the commencement of construction of the Facility. If Buyer elects to purchase such Product, then the Parties shall enter into a binding agreement consistent with the foregoing and otherwise on terms and conditions substantially similar with this Agreement, the same being modified only as necessary to address changes which arise due to the passage of time. Neither Supplier nor Supplier’s Affiliates may sell or transfer the Facility, or any part thereof, or their land rights or interests in the Project Site (including the interconnection queue position) during the Restricted Period so long as the limitations contained in this Section 24.5.1 apply, unless the transferee agrees to be bound by the terms set forth in this Section 24.5.1 pursuant to a written agreement approved by Buyer. Notwithstanding the above prohibition on a sale of transfer, this prohibition will not prevent the sale by Supplier or Supplier’s Affiliates of their interests in the Project Site to a third party if an independent engineer provides a notarized certification to the fact that a solar facility cannot be developed on the Project Site. Buyer shall be permitted to file a notice of the rights contained in this Section 24.5.1 with respect to the Supplier’s and Supplier’s Affiliates’ interests in the Project Site. Supplier shall indemnify and hold Buyer harmless from all Losses sustained by Buyer as a result of any breach of the covenants contained in this Section 24.5.1.

24.6 Step-In Rights.

- 24.6.1 Step-In Rights following an Event of Default. If either (A) Supplier (i) fails to achieve Commercial Operation within one hundred eighty (180) days after the Commercial Operation Deadline and Supplier has committed an Event of Default for which this Agreement has not been terminated by Buyer and (ii) has failed to take any reasonable actions identified in writing by Buyer to achieve Commercial Operation, then without limiting its other rights and remedies hereunder, or (B) Supplier (i) fails to achieve Commercial Operation by the Commercial Operation Deadline and (ii) fails to pay any Daily Delay Damages as required hereunder, then, in either case (A) or (B), Buyer shall have the right to enter the Project Site and take possession of the Facility and to take or cause to be taken all such actions

and do or cause to be done all such things as Buyer may reasonably consider necessary or desirable to complete the Facility and cause Commercial Operation to occur. Upon achieving Commercial Operation, Buyer shall: (a) return possession of the Facility to Supplier upon execution by Supplier of an indemnity and release agreement, in form and substance reasonably acceptable to Buyer, pursuant to which Supplier shall (subject to the proviso at the end of this Section 24.6.1) indemnify and release Buyer from all claims arising out of Buyer's exercise of its rights pursuant to this Section 24.6; or (b) if and for so long as Supplier refuses to execute such indemnity and release agreement: (i) operate the Facility for all or such portion of the remaining Term as Buyer may elect, in its sole discretion, pursuant to the license granted in Section 24.6.2; and/or (ii) exercise its other rights and remedies under this Agreement, including the right to terminate this Agreement without the payment of any termination damages by Buyer; provided that, notwithstanding the foregoing or any such release and indemnity, Buyer shall be responsible for and indemnify, defend, and hold harmless Supplier and its Affiliates from and against all Losses arising out of, relating to, or resulting from Buyer's negligence or willful misconduct in exercising Buyer's rights under this Section 24.6.

24.6.2 License to Operate Facility. Supplier hereby irrevocably grants to Buyer the right, license and authority to enter the Project Site, to construct, operate and maintain the Facility for the periods authorized under Section 24.6.1. During any period in which Buyer constructs, operates or maintains the Facility pursuant to the license granted in this Section 24.6.2, Buyer will continue to accrue and make payments in accordance with the terms of this Agreement for Product delivered during such period net of Buyer's reasonable costs to exercise its rights under this Section 24.6, and Supplier shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to construct, operate and maintain the Facility. During such time as Buyer is exercising its rights pursuant to this Section 24.6, it shall conduct all of its activities in accordance with Good Utility Practice and all applicable Laws and reliability criteria.

24.6.3 Records and Access. Supplier shall collect and have available at a convenient, central location at the Project Site all documents, contracts, books, manuals, reports, and records required to construct, operate and maintain the Facility in accordance with Good Utility Practice. All such information shall be deemed confidential information and shall not be disclosed by Buyer without Supplier's prior written consent, except as required by Law or court order, and except for disclosures required to the PUCN, all subject to customary protective orders or appropriate confidentiality protections. Buyer and Supplier shall cooperate in executing such further confidentiality agreements with third-party suppliers as may be reasonably required to enable disclosure of documents, records and information without breaching Supplier's contracts with or legal obligations to such third parties. Subject to the provisions of this Section 24.6, (A) upon Buyer's notice of intent to exercise its rights under this

Section 24.6, Buyer, its employees, contractors, or designated third parties shall have the right to enter the Project Site and the Facility for the purpose of constructing, operating or maintaining the Facility, and (B) upon the exercise by Buyer of the its rights under this Section 24.6, Supplier shall cause the Facility contractor or operator (and any Person within the control of Supplier) to give Buyer access to and control of the construction, operation and maintenance of the Facility, as applicable, to the extent reasonably necessary to enable Buyer to exercise its rights under this Section 24.6, and shall provide reasonable assistance and cooperation to Buyer to effect safely the transfer of responsibility for construction, operation and maintenance as may be requested by Buyer. Supplier shall execute such documents and take such other action as may be necessary for Buyer to effectuate its rights under this Section 24.6.

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

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

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

25. REPRESENTATIONS AND WARRANTIES OF SUPPLIER

Supplier represents and warrants to Buyer as of the Effective Date as follows (and solely with respect to Sections 25.11 and 25.12, covenants to Buyer that such representations and warranties will be true and correct for so long as this Agreement is in force and effect):

- 25.1 Organization. Supplier is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite entity power and authority to own or lease and operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or licensed to do business and is in good standing in the State of Nevada and in each other jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not reasonably be expected to have a Material Adverse Effect on Supplier.
- 25.2 Authority. Supplier has full authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution, delivery and performance of its obligations under this Agreement. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency or similar Laws affecting the enforcement of creditors' rights generally and (b) general principles of equity, whether considered in a proceeding in equity or at law.
- 25.3 Governmental Approvals; No Violation. Other than obtaining the Supplier's Required Regulatory Approvals as set out in Exhibit 10, the execution, delivery and performance of this Agreement by Supplier shall not: (a) conflict with or result in any breach of any provision of the articles of organization (and/or other governing documents) of Supplier; (b) require any Governmental Approval, except where the failure to obtain such Governmental Approval would not reasonably be expected to have a Material Adverse Effect on Supplier; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 25.4 Regulation as a Utility. Except for its anticipated future status as a "public utility" as defined in the Federal Power Act, and as set forth in Exhibit 10, Supplier is not subject to regulation as a public utility or public service company (or similar designation) by any Governmental Authority.
- 25.5 Availability of Funds. Supplier has, or will have, and shall maintain sufficient funds available to it to perform all of its obligations under this Agreement and to consummate the transactions contemplated pursuant hereto.

- 25.6 Interconnection Process; Transmission. Supplier has initiated with the Transmission Provider the process of obtaining the rights to interconnect the Facility to the Transmission System in order to provide for the delivery of Net Energy to and at the Delivery Point.
- 25.7 Interconnection Cost Due Diligence. Supplier has conducted due diligence regarding the costs of all facilities and equipment necessary to interconnect the Facility to and at the Delivery Point and all such costs are covered by payments for Product provided for in this Agreement.
- 25.8 Required Facility Documents. All Required Facility Documents are listed on Exhibit 12. Pursuant to the Required Facility Documents, Supplier holds as of the Effective Date, or will hold by the Commercial Operation Date (or such other later date as may be specified under requirements of Law), and will maintain for the Term all Required Facility Documents (including all material authorizations, rights and entitlements) necessary to construct, own, operate and maintain the Facility and to perform its obligations under this Agreement, including the sale and delivery of Product to Buyer in accordance with this Agreement. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Facility or the Project Site.
- 25.9 Governmental Approvals. Supplier has applied or will apply for or has received the Governmental Approvals listed in Exhibits 10 and 12, and as of the Effective Date no other material discretionary Governmental Approvals are required by Supplier to construct, own, operate and maintain the Facility or perform its obligations under this Agreement. Following the Commercial Operation Date, Supplier shall notify Buyer of any additional material Governmental Approvals that are required for the ownership, operation and maintenance of the Facility or the performance by Supplier of its obligations under this Agreement, in each case, promptly after Supplier makes any such determination.
- 25.10 Related Agreements. Supplier has entered into or will enter into all material agreements as listed in Exhibit 12 necessary for the construction, ownership, operation and maintenance of the Facility and the performance of its obligations under this Agreement.
- 25.11 Certification. Subject to Section 3.5, the Generating Facility qualifies as a Renewable Energy System and Supplier has been and is in compliance with all requirements set forth in the Renewable Energy Law.
- 25.12 Title. Supplier will own all Product attributable to the Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third party.
- 25.13 Project Execution Plan. Supplier will execute the development and construction of the Facility in accordance with the project execution plan submitted by Supplier to

Buyer pursuant to the request for proposals dated January 5, 2018. To the extent the Facility uses equipment listed on Exhibit 23, Supplier shall construct the Facility using only such equipment manufactured by the vendors, subcontractors and equipment suppliers listed on Exhibit 23.

- 25.14 Work Site Agreement. Supplier shall enter into a work site agreement, memorandum of understanding, or similar document in the form attached hereto as Exhibit 21.
- 25.15 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Article 25 are made as of the Effective Date and shall be deemed repeated as of the Commercial Operation Date. If at any time during the Term, Supplier obtains actual knowledge of any fact, circumstance, event or information that would have caused or cause any of the representations and warranties in this Article 25 to be materially untrue or misleading at the time given or deemed given or at any time thereafter for so long as this Agreement is in force and effect, then Supplier shall provide Buyer with written notice of the fact, circumstance, event or information, the representations and warranties affected, and the action, if any, which Supplier intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 25.15 shall be given as soon as practicable after Supplier obtains actual knowledge of any such fact, circumstance, event or information.

26. REPRESENTATIONS AND WARRANTIES OF BUYER

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

- 26.1 Organization; Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Nevada and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not reasonably be expected to have a Material Adverse Effect on Buyer.
- 26.2 Authority. Buyer has full authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution, delivery and performance of its obligations under this Agreement. No other proceedings or approvals on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency or similar Laws affecting the enforcement of

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

- 26.3 Governmental Approvals; No Violation. Other than obtaining Buyer's Required Regulatory Approvals as set out in Exhibit 9, the execution, delivery and performance of its obligations under this Agreement by Buyer shall not: (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any Governmental Approval, except: (i) where the failure to obtain such Governmental Approval would not reasonably be expected to have a Material Adverse Effect on Buyer; or (ii) for Governmental Approvals which become applicable to Buyer as a result of specific regulatory status of Buyer or as a result of any other facts that specifically relate to the business or activities in which Buyer is or proposes to be engaged, which Governmental Approvals have been obtained or made by Buyer; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 26.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Article 26 are made as of the Effective Date. If at any time during the Term, Buyer obtains actual knowledge of any fact, circumstance, event or information that would have caused or cause any of the representations and warranties in this Article 26 to be materially untrue or misleading at the time given or at any time thereafter for so long as this Agreement is in force and effect, Buyer shall provide Supplier with prompt written notice of the fact, circumstance, event or information, the representations and warranties affected, and the action, if any, which Buyer intends to take to make the representations and warranties true and correct.

27. INSURANCE

- 27.1 General Requirements. From and after the Effective Date, Supplier shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations and facilities in the manner and amounts set forth in this Article 27. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If any policy is maintained on a "claims made" form and is converted to an "occurrence form," the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer.
- 27.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Nevada and with the equivalent, on a continuous basis, of an "A.M. Best Company Rating" of "A" or better or rated "A" by S&P Global Ratings and shall include provisions or endorsements:

- 27.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;
- 27.2.2 Stating that no reduction, cancellation or non-renewal of the policy shall be effective until thirty (30) days (except ten (10) days for non-payment of premium) from the date notice thereof is actually received by Buyer; provided that upon Supplier's receipt of any notice of reduction, cancellation or non-renewal, Supplier shall immediately provide notice thereof to Buyer;
- 27.2.3 Providing Buyer with subrogation waivers on all coverage;
- 27.2.4 Providing for Separation of Insured coverage in the general liability and auto liability insurance policies; and
- 27.2.5 Naming Buyer as an additional insured on the general liability and auto liability insurance policies of Supplier as its interests may appear with respect to this Agreement.
- 27.3 Certificates of Insurance. Within thirty (30) days of the Effective Date and each anniversary thereafter during the Term, and upon any change in coverage or at the request of Buyer (not to exceed once each year), Supplier shall provide to Buyer properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance shall provide the following information:
 - 27.3.1 The name of insurance company, policy number and expiration date;
 - 27.3.2 The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of Supplier; and
 - 27.3.3 A statement indicating that Buyer shall receive at least thirty (30) days prior notice of cancellation or non-renewal of a policy or of a reduction of liability limits and ten (10) days prior notice for cancellation due to non-payment of premium with respect to a policy.
- 27.4 Certified Copies of Insurance Policies. At Buyer's request, in addition to the foregoing certificates of insurance, Supplier shall deliver to Buyer a copy of each insurance policy, certified as a true and complete copy by an authorized representative of the issuing insurance company.
- 27.5 Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.

27.6 Supplier's Minimum Insurance Requirements.

27.6.1 Worker's Compensation. Workers' compensation insurance in the form and manner required by statutory requirements and endorsement providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable. Employer's liability insurance with the following limits: [REDACTED]
[REDACTED]
[REDACTED] in the annual aggregate per each bodily injury by occupational disease.

27.6.2 General Liability. General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of a [REDACTED]
[REDACTED]
[REDACTED]

27.6.3 Automobile Liability. Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage with a combined single limit of [REDACTED]
[REDACTED]

The minimum insurance limits set forth in Sections 27.6.1, 27.6.2, and 27.6.3 can be met by Supplier's underlying workers' compensation/employer's liability, general liability, and automobile liability policies in combination with an excess/umbrella insurance policy.

27.6.4 Failure to Comply. If Supplier fails to comply with the provisions of this Article 27, Supplier shall save harmless and indemnify Buyer from any direct or indirect Loss, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Article 27, in accordance with the indemnification provisions of Article 18.

28. NO EXPECTATION OF CONFIDENTIALITY; PUBLIC STATEMENTS

28.1 No Expectation of Confidentiality. Supplier has no expectation that any of the terms of this Agreement will be treated as confidential by Buyer, and Buyer has no obligation to seek confidential treatment of this Agreement in connection with Buyer's Required Regulatory Approvals or otherwise.

28.2 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement and Supplier shall not issue any such public announcement, statement or other disclosure without having first received the written consent of Buyer (not to be unreasonably withheld), except as may be required by Law. Notwithstanding the

foregoing, Supplier acknowledges and agrees that Buyer may advertise, issue brochures or make other announcements, publications or releases regarding this Agreement and the Facility for educational, promotional or informational purposes, and either Party may disclose this Agreement and information regarding the Facility to its Affiliates, and to its and its Affiliates' members, officers, directors, employees, attorneys, agents, actual or potential lenders and investors, and representatives in connection with the execution, delivery and performance of its obligations under this Agreement. Supplier shall reasonably cooperate with Buyer regarding such activities, including providing Buyer with reasonable access to the Facility and authorizing the use of pictures of the Facility for such activities. It shall not be deemed a violation of this Section 28.2 to file this Agreement with the PUCN or FERC or any other Governmental Authority in connection with Buyer's Required Regulatory Approvals, Supplier's Required Regulatory Approvals or otherwise.

29. MISCELLANEOUS

29.1 Notices.

- 29.1.1 All notices, requests, demands, submittals, waivers and other communications required or permitted to be given under this Agreement (each, a "Notice") shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the Parties' Contract Representatives as set forth in Exhibit 4, as the same may be modified from time to time by Notice from the respective Party to the other Party.
- 29.1.2 All Notices required by this Agreement shall be sent by regular first class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery, or electronic mail. Such Notices will be effective upon receipt by the addressee, except that Notices transmitted by electronic mail shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 16:00 PPT, and if transmitted after that time, on the following Business Day. If any Notice sent by regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, or overnight courier delivery is tendered to an addressee and the delivery thereof is refused by such addressee, then such Notice shall be deemed validly and effectively given upon such tender. All oral notifications required under this Agreement shall be made to the receiving Party's Contract Representative or Operating Representative (as applicable) and shall promptly be followed by Notice as provided in this Section 29.1.
- 29.1.3 Notices of Force Majeure or an Event of Default pursuant to Article 20 or Article 24, respectively, and Notices of a change to Exhibit 4 shall be sent either by registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery or electronic mail. If any such Notice

is sent via electronic mail, then a copy of such Notice shall also be sent either by registered or certified U.S. mail (postage paid return receipt requested), or overnight courier delivery. Such Notices will be effective as provided in Section 29.1.2.

29.1.4 Any payments required to be made to a Party under this Agreement shall be made pursuant to the payment instructions in Exhibit 4, as such payment instructions may be amended by such Party from time to time by Notice to the other Party.

29.2 Merger. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter contained herein whether written or oral.

29.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

29.4 Rules of Construction; Interpretation. Unless otherwise required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” or “Exhibits” are to articles, sections, schedules, or exhibits hereof; (c) all references to a particular Person include a reference to such Person’s permitted successors and assigns; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” (and the correlative terms “include,” “includes” and “included”) means “including, without limitation” or “including, but not limited to”; (h) all references to a particular Law means that Law as amended, supplemented or otherwise modified from time to time; (i) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (j) the word “or” is not necessarily exclusive. Reference to “days,” “months,” “quarters” and “years” shall be to calendar days, months, quarters and years, unless expressly stated otherwise herein. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

29.5 Headings and Titles. The headings and section titles in this Agreement are for convenience of the Parties only and shall not be used to construe this Agreement.

29.6 Discontinued or Modified Index. If any index publisher discontinues publishing or substantially modifies any index utilized herein, then the index used herein will be modified to the most appropriate available index, with appropriate adjustments to take into account any changes in the location of measurement.

- 29.7 Severability. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable terms, provisions or conditions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by Law.
- 29.8 Waivers; Remedies Cumulative; Liquidated Damages as Exclusive Remedy. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law or in equity. NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION HEREOF, FOR BREACH OF ANY PROVISION HEREOF FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED (INCLUDING SECTIONS 3.5 (RENEWABLE ENERGY SYSTEM), 3.6 (SHORTFALL; REPLACEMENT COSTS), 3.7 (PC SHORTFALL; PC REPLACEMENT COSTS), 8.4 (FAILURE TO ACHIEVE COMMERCIAL OPERATION), 8.5 (DELAY DAMAGES), 8.6 (NAMEPLATE DAMAGES) AND 8.7 (MODIFICATION)), SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.
- 29.9 Amendments. Amendments or modifications to this Agreement must be in writing and executed by an authorized representative of each Party. Buyer may determine that submitting an amendment or modification to this Agreement to the PUCN and FERC, as applicable, for filing, acceptance or approval shall be a condition precedent to the effectiveness of any such amendment.
- 29.10 Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, agreements, obligations and conditions hereof.
- 29.11 Choice of Law. This Agreement and the rights and obligations of the Parties hereunder shall be construed and governed by the Laws of the State of Nevada,

except for such Laws that would require the application of the Laws of another jurisdiction.

- 29.12 Further Assurances. The Parties agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement. Without limiting the foregoing, whenever revised or updated exhibits are delivered or generated hereunder for attachment to this Agreement, the Parties will memorialize the same in a reasonable written instrument, to be executed and delivered by both Parties.
- 29.13 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code.
- 29.14 No Third-Party Beneficiaries. Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.
- 29.15 Specific Performance. Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of Supplier hereunder. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of Supplier hereunder, and that any liability limits contained herein shall not operate to limit the exercise of Buyer’s remedies in equity to cause Supplier to perform its obligations hereunder. Supplier agrees that it will not assert as a defense to Buyer’s action for specific performance of, or injunctive relief relating to, Buyer’s obligations hereunder that the amounts payable or paid by Supplier in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Supplier hereby conclusively waives such defense. Supplier shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer’s right to specific performance or injunctive relief.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

BUYER:

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

By: 

Name: Douglas A. Cannon
Title: President

SUPPLIER:

325MK 8ME LLC

By: 

Name: Martin Hermann
Title: Co-President

By: 

Name: Thomas Buttgenbach
Title: Co-President

[Signature Page to Long-Term Renewable Power Purchase Agreement]

EXHIBIT 1**DESCRIPTION OF FACILITY**

1. Name of Generating Facility: Eagle Shadow Mountain Solar Farm

(a) Location: Clark County, Nevada

(b) Delivery Point: Reid Gardner Substation 230 kV Bus

2. Supplier: 325MK 8me LLC

3. Parent: 8minutenergy Renewables, LLC

4. Operator: To be determined in accordance with Exhibit 15

5. Equipment:

(a) Type of Generating Facility: Solar Photovoltaic

(b) Installed Nameplate Capacity:

(i) Total capacity: 341 MVA

(ii) Expected Nameplate Capacity Rating at Delivery Point: 300 MW AC @ +/- 0.95, subject to the provisions of Section 3.4.5

(iii) Total gross output capacity at inverter terminals: 310 MW

(iv) Total capacity net of Station Usage and other losses: 300 MW

(c) Additional Technology Specific Information, if any:

Total gross output capacity at inverter terminals is oversized to compensate for AC losses between the inverter terminals and Delivery Point including applicable step-up transformers, MV collection lines, gen-tie losses and Station Usage. All gross capacity ratings and loss assumptions are pending final equipment selection and design, however the Expected Nameplate Capacity Rating at Delivery Point is not subject to change. The selected equipment and site controller will ensure the capability to meet, but not exceed the Expected Nameplate Capacity Rating at Delivery Point.

6. Operating Characteristics of Generating Facility:

(a) VAR, leading: 98.6 MVAR

(b) VAR, lagging (-): -98.6 MVAR

(c) Controlled Ramp Rate (MW/minute): 30MW/minute

(d) Minimum Operating Capacity (MW): 0 MW

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

EXHIBIT 2A

PRODUCT RATES

PRODUCT RATE

The Product Rate shall be [REDACTED] (the “Product Rate”).

EXHIBIT 2B**FORM OF MONTHLY ENERGY INVOICE****Supplier Letterhead**

Facility: _____ **Date:** _____

Facility ID: _____ **Billing Period:** _____

Invoice Number: _____

CURRENT MONTHLY BILLING DATA INPUT

Pricing **\$/MWh**

Product Rate _____

Provisional Rate _____

Test Energy Rate _____

Excess Energy rate ($\leq 106\%$) _____

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

Supply Amount _____

Excused Product

Planned Outages _____

Force Majeure _____

Emergencies _____

Curtailed Product _____

Economic Curtailed Product _____

Total Excused Product _____

Delivered Amount (kWh)	On-Peak	Off-Peak
Net Energy (excluding Excess Energy)	_____	_____
Excess Energy ($\leq 106\%$)	_____	_____
Excess Energy ($> 106\%$)	_____	_____
Total Delivered Amount	_____	_____

CURRENT MONTHLY INVOICE CALCULATION

	Net Energy		Rate/kWh		Amount
a. Product ¹	_____	x	_____	=	\$ _____
b. Excess Energy ($\leq 106\%$)	_____	x	_____	=	\$ _____
c. Excess Energy ($> 106\%$)	_____	x	_____	=	\$ _____
d. Provisional Energy	_____	x	_____	=	\$ _____
e. Test Energy	_____	x	_____	=	\$ _____
f. Shortfall/Replacement Cost (from page 2B-2)					\$ _____
g. Total Product Payment (a+b+c+d+e-f)					\$ _____
h. Adjustments (+/-)					\$ _____
TOTAL AMOUNT DUE (g + h)					\$ _____

PAYMENT DUE DATE NO LATER THAN: _____

¹ Excluding Provisional Energy and Test Energy

EXHIBIT 2B**FORM OF MONTHLY ENERGY INVOICE****REPLACEMENT COST CALCULATION – For Billing Period: September****Summer On-Peak**

a. Monthly On-Peak Supply Amounts _____ kWh
 b. Excused Product – On-Peak _____ kWh
 c. Difference (a – b) _____ kWh
 d. 90% of Difference (0.90 * c) _____ kWh
 e. Delivered Amount _____ kWh

 Shortfall (Y/N)? _____

 f. Shortfall Amount (max d – e or zero) _____ kWh

 Replacement Cost Calculation
 g. Average On-Peak Mead _____ \$/MWh
 h. Summer On-Peak Product Rate _____ \$/MWh
 i. Difference (max g – h or zero) _____ \$/MWh

 j. 10% of Product Rate (0.1 x i) _____ \$/MWh

 k. Replacement Cost (max of f * j or f * i) \$ _____

REPLACEMENT COST CALCULATION – For Billing Period: December**Non-Summer On-Peak**

l. Monthly On-Peak Supply Amounts _____ kWh
 m. Excused Product – On Peak _____ kWh
 n. Difference (l – m) _____ kWh
 o. 90% of Difference (0.90 * n) _____ kWh

 p. Delivered Amount _____ kWh

 q. Shortfall (Y/N)? _____

 r. Shortfall Amount (max o – p or zero) _____ kWh

 Replacement Cost Calculation
 s. Average On-Peak Mead _____ \$/MWh
 t. Non-Summer On-Peak Product Rate _____ \$/MWh
 u. Difference (max s – t or zero) _____ \$/MWh

 v. Replacement Cost (r * u) \$ _____

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE DETAIL

[illegible]

EXHIBIT 3A**DESCRIPTION OF PROJECT SITE**

Portions of Sections 1, 11, 12, 14, 15, 16, and 22, Township 16S, Range 64E, Mount Diablo Base and Meridian. Portions of Section 6, Township 16S, Range 65E, Mount Diablo Base and Meridian.

EXHIBIT 3B

MAP DEPICTING PROJECT SITE

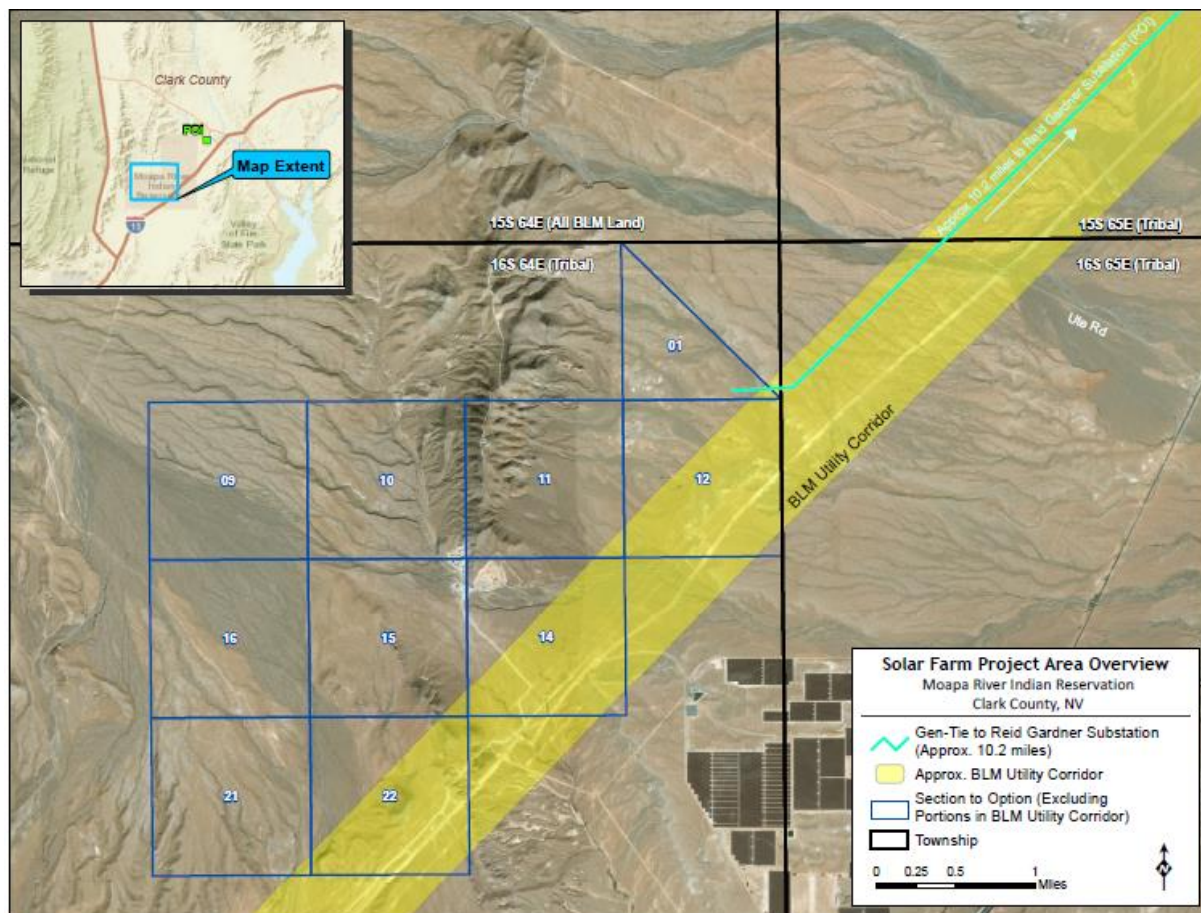


EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

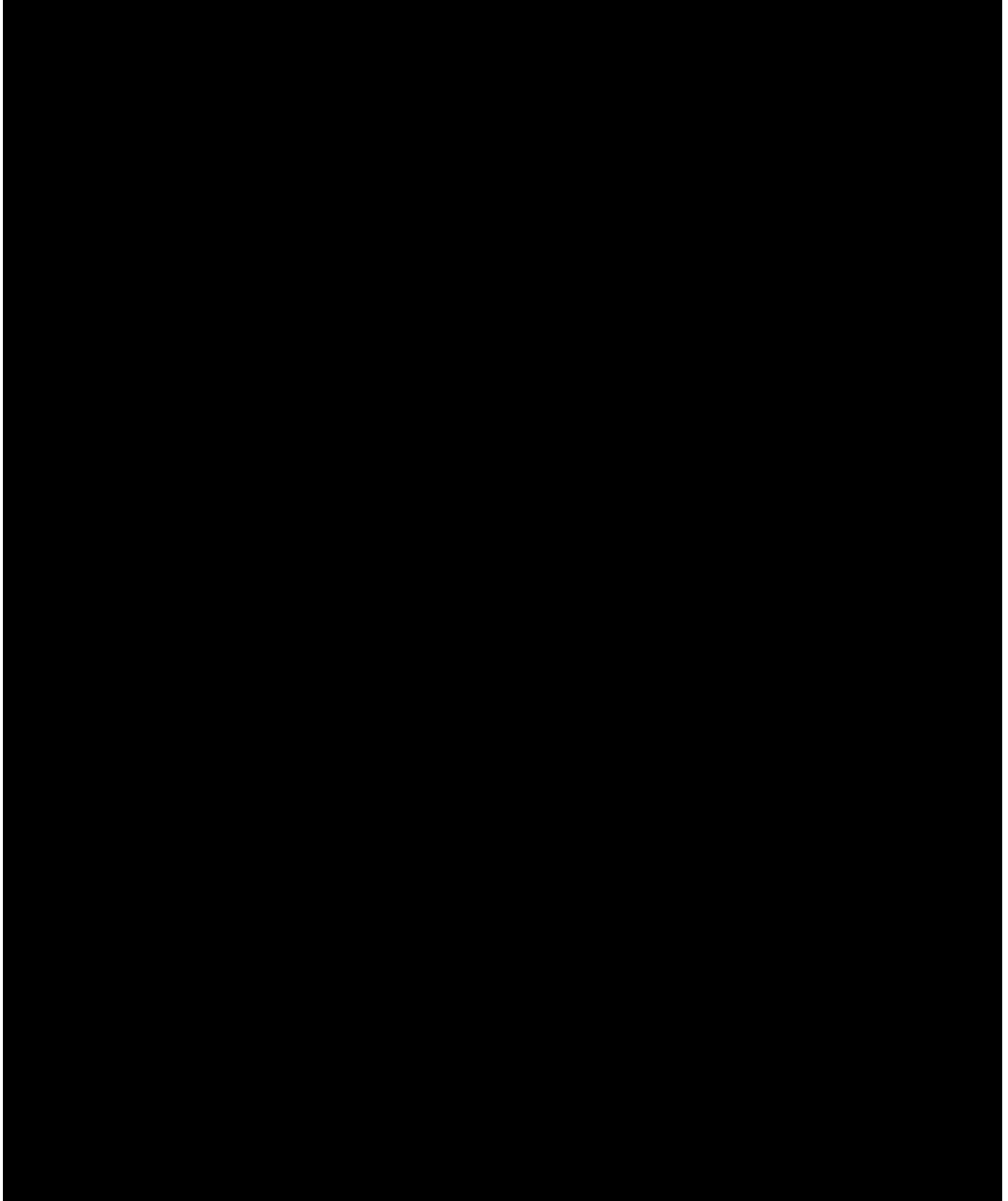


EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

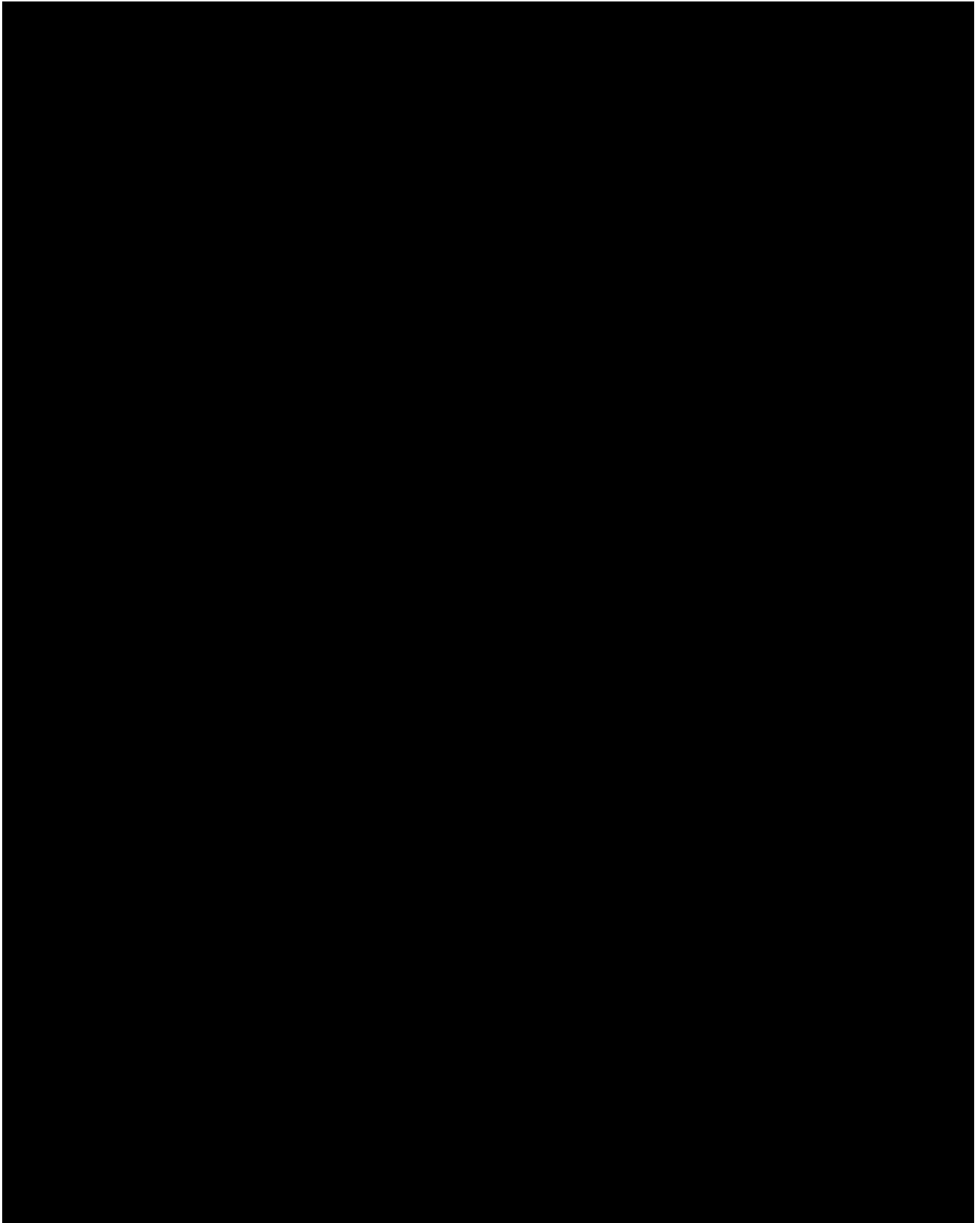


EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

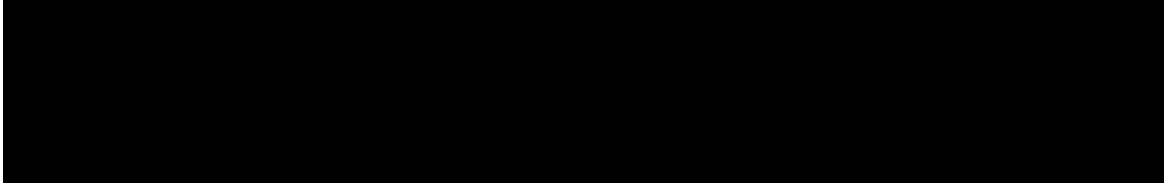


EXHIBIT 5

ONE-LINE DIAGRAM OF FACILITY AND DELIVERY POINT

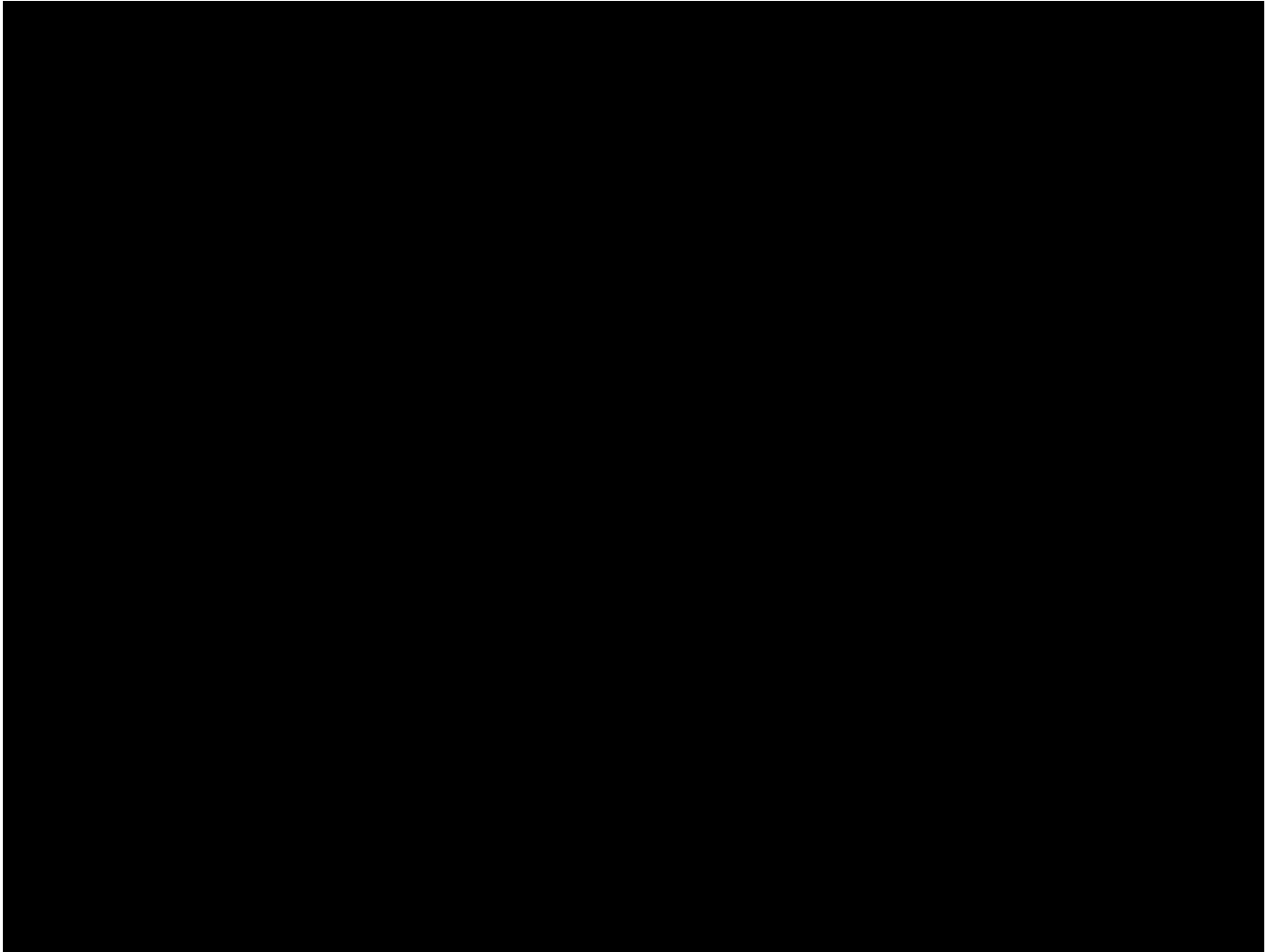


EXHIBIT 5

ONE-LINE DIAGRAM OF FACILITY AND DELIVERY POINT

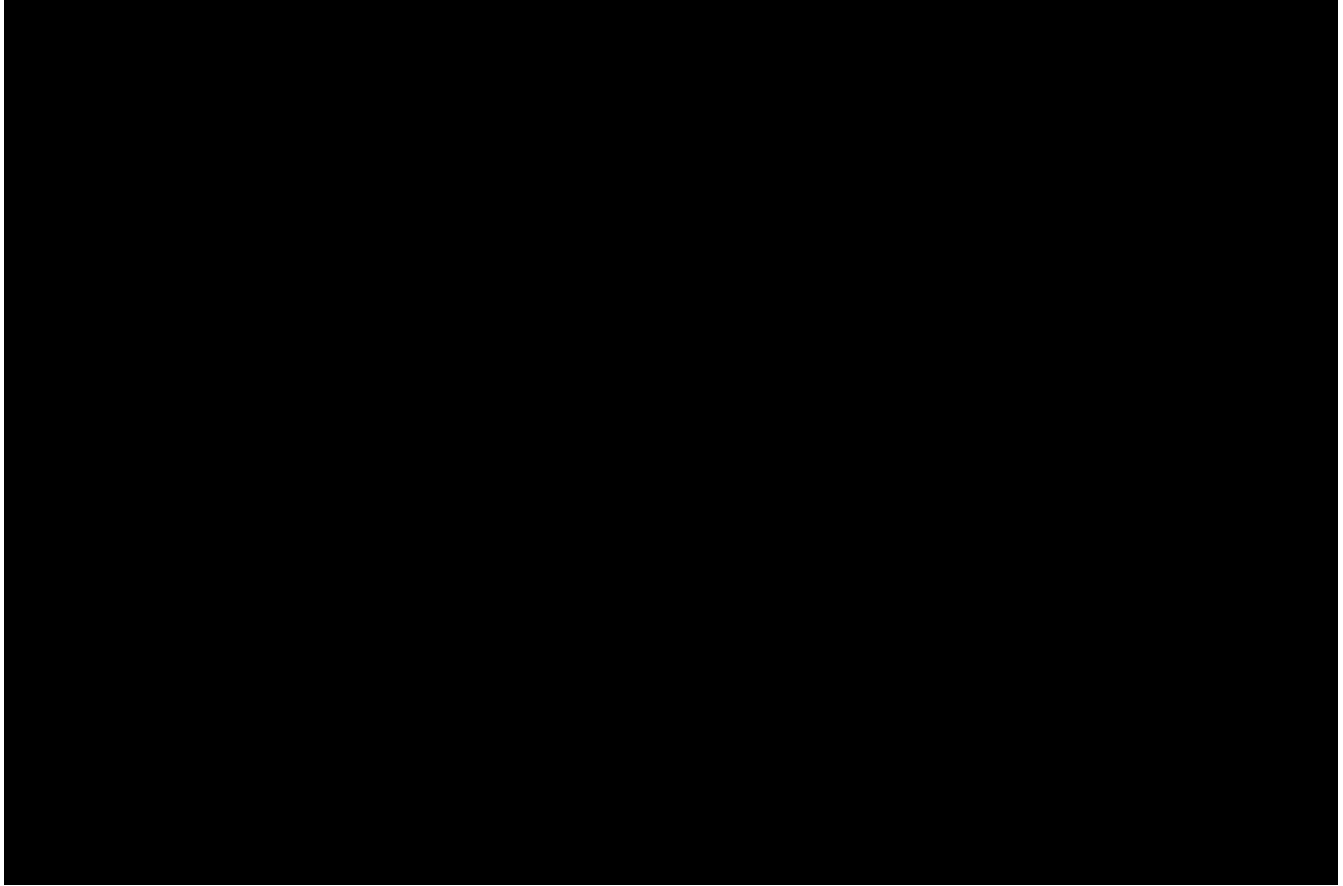


EXHIBIT 6

PROJECT MILESTONE SCHEDULE

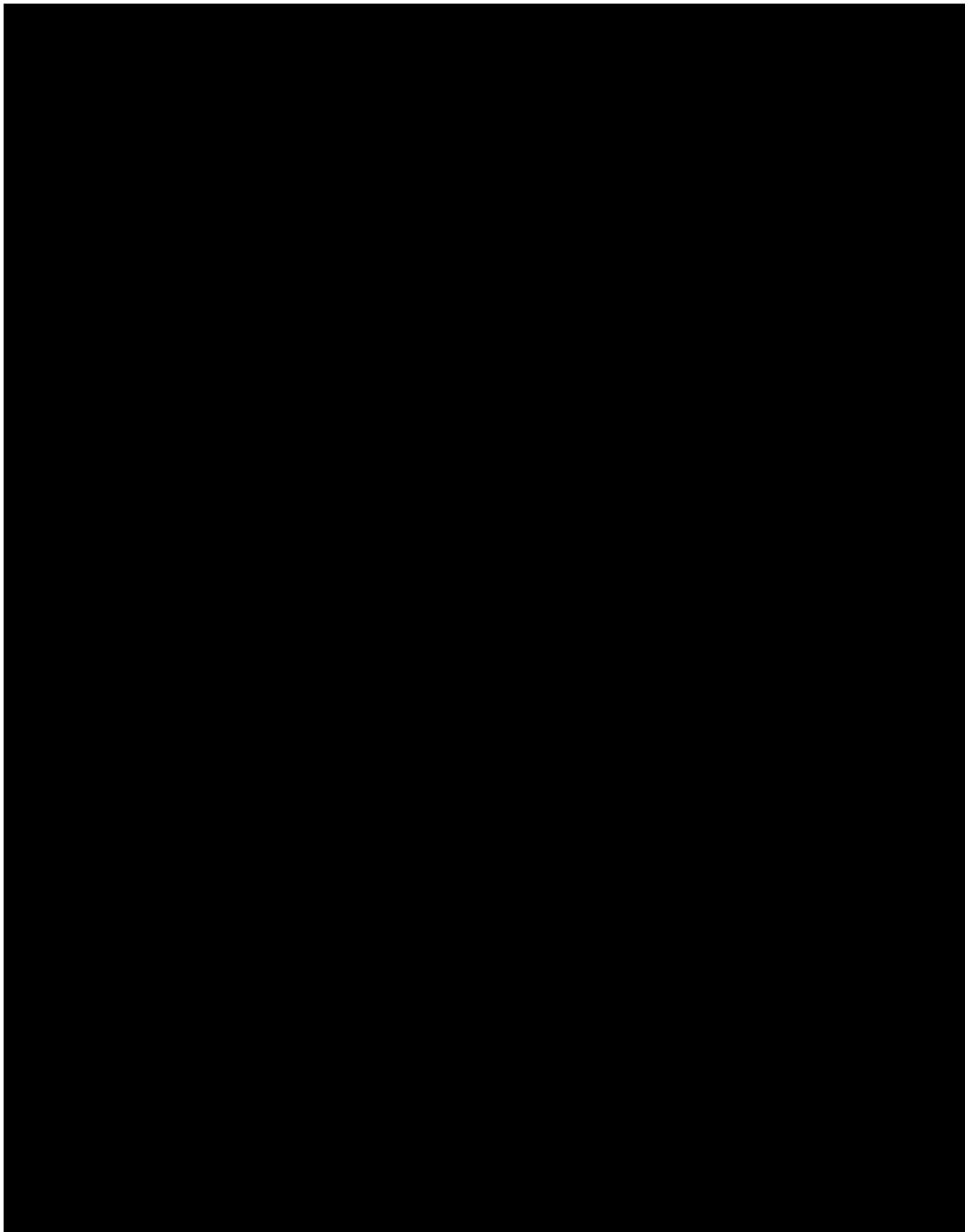


EXHIBIT 6

PROJECT MILESTONE SCHEDULE



EXHIBIT 7

PERFORMANCE TESTS

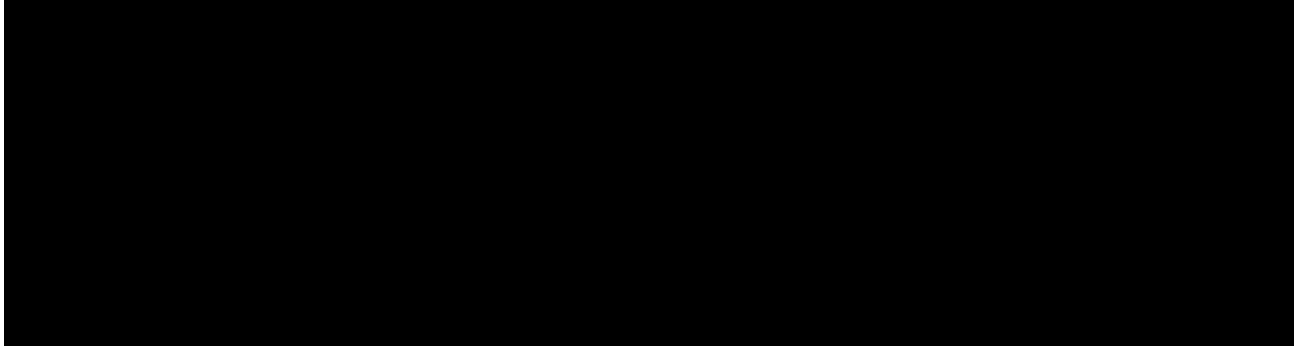


EXHIBIT 8

FORM OF AVAILABILITY NOTICE

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

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

Date For Notice: _____

Supplier: _____

Name of Suppliers Representative: _____

EXHIBIT 8**FORM OF AVAILABILITY NOTICE**

Buyer: Nevada Power Company

Contact Info: Supplier Address here

City, State, Zip here

123-456-7890

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

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

EXHIBIT 9**BUYER'S REQUIRED REGULATORY APPROVALS**

1. PUCN Approval of this Agreement.
2. Other Buyer Required Regulatory Approvals may be required on a case by case basis.

EXHIBIT 10**SUPPLIER'S REQUIRED REGULATORY APPROVALS**

1. Although obtaining EWG status is not a Seller Required Regulatory Approval, if Supplier elects to obtain EWG status for the Facility, Supplier shall submit or obtain, as applicable: (a) a Notice of Self Certification as an EWG, or (b) an order from FERC granting the Facility EWG status.
2. FERC authorization under section 205 of the Federal Power Act to make sales of electric energy, capacity, and ancillary services from the Facility.
3. Utility Environmental Protection Agency permit.
4. Appropriate National Environmental Policy Act approval(s).
5. Appropriate Bureau of Indian Affairs approval(s).

EXHIBIT 11**TECHNICAL SPECIFICATIONS**

In accordance with Section 8.1, Supplier shall provide: (a) not later than Supplier's completion of the Project Milestone relating to obtaining Required Facility Documentation (Section 2(a) of Exhibit 6), project technical specifications; and (b) within thirty (30) Business Days after the Commercial Operation Date, any updates to the project technical specifications, if applicable.

The technical specifications for the Facility to be attached as Exhibit 11 will include a description of major project equipment including vendor, make and model.

EXHIBIT 12**REQUIRED FACILITY DOCUMENTS****Required to construct the Facility:**

1. This Agreement.
2. Engineering, Procurement, and Construction Contract.
3. Operating and maintenance agreement.
4. Interconnection Agreement.
5. Utility Environmental Protection Agency permit.
6. California Energy Commission, Renewable Portfolio Standard Pre-Certification.
7. U.S. Energy Information Administration, filing of Form 860.
8. U.S. Bureau of Indian Affairs, Solar Energy Ground Lease
9. U.S. Bureau of Land Management, Right of Way Grant
10. U.S. Fish and Wildlife Service, Endangered Species Act Section 7 Consultation
11. State Historic Preservation Office, National Historic Preservation Act Section 106 Consultation
12. Public Utilities Commission of Nevada, Utility Environmental Protection Act Permit to Construct
13. Clark County, Special Use Permit
14. Any other documents required as determined by Supplier.

Required to operate the Facility:

1. Western Renewable Energy Generation Information System (WREGIS), registrations, if applicable.
2. U.S. Energy Information Administration, filing of Form 923.
3. Federal Energy Regulatory Commission, notice of self-certification of exempt wholesale generator (EWG) status.
4. Federal Energy Regulatory Commission market based rate authorization, if required.
5. Nevada Renewable Energy System certification.
6. Utilities' permission to operate from the Transmission Provider.
7. Any other documents required as determined by Supplier.

Required within sixty (60) days of Commercial Operation:

1. California Energy Commission, Renewable Portfolio Standard Certification

EXHIBIT 13**SUPPLY AMOUNT**

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

Hour Ending		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0100	Off-Peak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0200		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0300		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0400		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0500		0.0	0.0	0.0	0.0	0.7	2.9	0.0	0.0	0.0	0.0	0.0	0.0
0600		0.0	0.0	0.2	20.6	87.0	116.0	67.5	33.2	7.2	0.0	0.0	0.0
0700	On Peak	0.0	4.9	66.3	169.7	244.2	270.0	225.7	197.9	156.6	69.8	13.1	0.0
0800		54.4	125.0	222.2	260.1	267.6	288.1	261.3	267.6	271.3	237.1	144.0	66.4
0900		189.6	218.7	251.6	282.2	279.6	290.0	266.2	276.5	275.6	258.8	221.0	198.2
1000		207.7	228.0	264.6	284.0	286.1	292.4	279.6	281.7	279.5	259.8	220.4	204.2
1100		193.4	231.1	269.1	283.7	287.1	291.2	275.6	287.0	282.2	254.1	204.8	185.1
1200		184.9	230.4	270.6	282.6	286.3	292.8	281.9	287.3	278.1	246.4	203.6	174.7
1300		188.6	231.1	274.5	277.4	286.8	289.1	283.2	292.3	265.1	240.0	205.4	171.3
1400		204.7	238.8	270.0	273.4	277.4	279.6	274.7	289.6	265.4	247.0	216.8	182.7
1500		214.0	247.0	259.2	260.1	281.7	291.7	268.3	265.7	274.9	246.2	231.6	172.6
1600		161.6	213.1	234.9	236.1	265.0	280.4	269.6	247.4	261.8	195.4	120.7	79.9
1700		20.0	79.9	157.4	204.2	255.1	264.5	257.4	204.0	162.6	43.5	2.6	0.6
1800		0.0	0.8	18.9	55.1	123.1	166.5	165.1	86.4	18.6	0.0	0.0	0.0
1900		0.0	0.0	0.0	0.0	6.1	24.6	23.2	1.7	0.0	0.0	0.0	0.0
2000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2100		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2200		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2300	Off-Peak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2400		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Daily Supply Amount (MWh)		1,619	2,049	2,560	2,889	3,234	3,440	3,197	3,018	2,799	2,298	1,784	1,436
Daily On-Peak Supply Amount (MWh)		1,619	2,049	2,559	2,869	3,146	3,321	3,129	2,985	2,792	2,298	1,784	1,436
Monthly Supply Amount (MWh)		50,186	57,366	79,347	86,675	100,244	103,193	99,095	93,564	83,967	71,244	53,519	44,509
Annual Supply Amount (MWh)		922,909											
Maximum Amount (MW)		300											

EXHIBIT 14**DIAGRAM OF FACILITY**

In accordance with Section 8.1, Supplier shall provide: (a) not later than Supplier's completion of the Project Milestone relating to obtaining Required Facility Documentation (Section 2(a) of Exhibit 6), a completed, construction-level drawings version of Exhibit 14; and (b) within thirty (30) Business Days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as built.

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

EXHIBIT 15**OPERATIONS AND MAINTENANCE AGREEMENT;
OPERATOR GOOD STANDING CERTIFICATE**

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

EXHIBIT 16

RESERVED

EXHIBIT 17**FORM OF LETTER OF CREDIT****IRREVOCABLE STANDBY LETTER OF CREDIT**

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

Letter Of Credit No. [_____]
Irrevocable Standby Letter Of Credit

Date of Issue: [_____] , 20__

Stated Expiration Date: [_____]

Applicant:
[Name and address]
[_____]
[_____]

Stated Amount: USD \$[_____]

Beneficiary:
[Name and address]
[_____]
[_____]

Credit Available With: [_____]

EXHIBIT 17**FORM OF LETTER OF CREDIT**

Ladies and Gentlemen:

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

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

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

Drawing Requests and all communications with respect to this Letter of Credit shall be in writing, addressed or presented in person to us at: [***Address of Issuing Bank***], Attn: [], referencing this Letter of Credit No. []. In addition, presentation of a Drawing Request may also be made by facsimile transmission to [***Fax number of Issuing Bank***], or such other facsimile number identified by us in a written notice to you. To the extent a Drawing Request is made by facsimile transmission, you must (i) provide telephone notification to us at [***Telephone number of Issuing Bank***] prior to or simultaneously with the sending of such facsimile transmission and (ii) send the original of such Drawing Request to us by overnight courier, at the same address provided above; provided, however, that our receipt of such telephone notice or original documents shall not be a condition to payment hereunder. Presentation of the original of this Letter of Credit shall only be required for any drawing of the entire Available Amount.

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

EXHIBIT 17**FORM OF LETTER OF CREDIT**

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

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

This Letter of Credit is effective immediately.

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

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

EXHIBIT 17**FORM OF LETTER OF CREDIT**

This Letter of Credit is transferable, only in its entirety and not in part, upon presentation to us, at our presentation office specified herein, of a signed transfer certificate in the form of Annex 3 accompanied by this original Letter of Credit and all amendments, if any, in which a Beneficiary irrevocably transfers to its successor or assign all of its rights hereunder, whereupon we will either issue a substitute letter of credit to such successor or assign or endorse such transfer on the reverse of this Letter of Credit, provided that any such successor or assign must be a permitted successor or assign of the Agreement and a party to the Agreement at the time of such transfer. Transfers to designated foreign nationals are not permitted as being contrary to the U.S. Treasury Department or Foreign Assets Controls Regulations.

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

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

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

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

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

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

[***Name of Issuing Bank***]

Authorized signature

EXHIBIT 17**FORM OF LETTER OF CREDIT****ANNEX 1**

[Letterhead of a Beneficiary]

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

DRAWING REQUEST

[Date]

[name and address of Issuing Bank]

Ladies and Gentlemen:

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

In connection with this drawing, we hereby certify that:

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

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

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

or

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

or

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

; and

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

EXHIBIT 17**FORM OF LETTER OF CREDIT**

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

[Beneficiary]

By: _____

Name:

Title:

EXHIBIT 17**FORM OF LETTER OF CREDIT**ANNEX 2
NOTICE OF EARLY EXPIRATION

[Date]

[Beneficiary name and address]

Ladies and Gentlemen:

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

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

Pursuant to the terms of the Letter of Credit, the Beneficiary is authorized to draw (pursuant to one or more drawings), prior to the Early Expiration Date, on the Letter of Credit in an aggregate amount that does not exceed the then Available Amount (as defined in the Letter of Credit).

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

[ISSUING BANK]

By: _____

Name:

Title:

cc:

[Applicant name and address]

EXHIBIT 17**FORM OF LETTER OF CREDIT**

ANNEX 3

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

[Name of Issuing Bank],

Date: _____

[Address]

[City, State]

Attn: Trade Services Department

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

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

NAME OF TRANSFEREE

ADDRESS OF TRANSFEREE_____
CITY, STATE/COUNTRY ZIP(hereinafter, the “transferee”) all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

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

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

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

Select one of the following:

____ we enclose a cashier's/certified check

____ we have wired funds to you through _____ bank

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

EXHIBIT 17**FORM OF LETTER OF CREDIT**

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

Very truly yours,

[BENEFICIARY NAME]

Authorized Signature

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

(Signature of Authenticating Bank)

(Name of Bank)

(Printed Name/Title)

(Date)

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

[Beneficiary name]

By: _____
Name:
Title:

cc:

[insert name and address of Transferee]

[insert name and address of Applicant]

EXHIBIT 17**FORM OF LETTER OF CREDIT**

ANNEX 4
VOLUNTARY REDUCTION REQUEST CERTIFICATE
[Date]

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

Ladies and Gentlemen:

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

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

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

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

[Beneficiary name]

By: _____

Name:

Title:

cc:

[Applicant name and address]

EXHIBIT 18**YEARLY PC AMOUNT**

The Yearly PC Amount shall be reduced on an annual basis by the Supply Degradation rate in accordance with Section 3.8



EXHIBIT 19**FORM OF LENDERS CONSENT**

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

WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately ____ MW solar-powered electric generating facility located _____, known as the _____ (the “Project”).

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

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

WHEREAS, Buyer and Borrower have entered into that certain Power Purchase Agreement, dated as of _____ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “PPA”).

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

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

EXHIBIT 19**FORM OF LENDERS CONSENT****SECTION 1. CONSENT TO ASSIGNMENT**

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

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

(B) NVE will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (a) cancel, terminate or suspend its performance under the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof, or (b) enter into any supplement, restatement, extension, amendment or modification of the PPA, except as provided in the PPA.

(C) NVE agrees to deliver duplicates or copies of all notices of default delivered by NVE under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. NVE may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have: (a) the later of any applicable cure period under the PPA or thirty (30) days from the date notice of default or breach is delivered to Administrative Agent to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to NVE which are due and payable by Borrower under the PPA, except that if NVE does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent, or (b) the later of any applicable cure period under the PPA or ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to NVE, so long as Administrative Agent continues to perform any monetary obligations under the PPA and all other ongoing obligations under the PPA are performed by Borrower or Administrative Agent or its designees or assignees. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designees or assignees declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designees or assignees will be allowed a reasonable period to complete such proceedings but not to exceed one hundred eighty (180) days. NVE consents to the transfer of Borrower's interest under the PPA to Administrative Agent or a Qualified Transferee upon enforcement of such security at a foreclosure sale by judicial or non-judicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, NVE shall recognize such Administrative Agent or Qualified Transferee as the applicable party under the PPA (provided that Administrative Agent or such Qualified Transferee assumes the obligations of Borrower under the PPA).

EXHIBIT 19**FORM OF LENDERS CONSENT**

“Qualified Transferee” means a Person that is at least as financially and operationally qualified as Borrower and, at a minimum, has a tangible net worth of at least seven million five hundred thousand dollars (\$7,500,000) or provides adequate assurance in an amount and form reasonably acceptable to Buyer and has (or agrees to contract with an operator who has) at least three (3) years of experience operating utility-scale solar photovoltaic generating plants.

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

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

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

SECTION 2. REPRESENTATIONS AND WARRANTIES

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