

1 The NGR Agreement (Attachment 2) and the associated power purchase agreement
2 (Attachment 3) (the "PPA") are presented hereto for informational purposes, and not for
3 Commission approval in this Docket, although this Stipulation and settlement is contingent
4 upon the approval of all Attachments in their related dockets.

5 The NGR Agreement transaction may consist of a combination of Renewable
6 Energy Credits ("RECs") or Portfolio Energy Credits ("PECs") purchased from the market
7 and PECs produced by a new photovoltaic generating facility, or in certain circumstances
8 PECs currently being or to be generated by Nevada Power. The attendant PPA for the NGR
9 Agreement, attached as Attachment 3, is subject to Commission review and is currently
10 awaiting approval by the Commission in Docket No. 15-07003. Any purchase of
11 Renewable Energy Credits as described in Section 5 of the NGR Agreement may occur
12 following Commission approval of this Stipulation, but prior to Commission consideration
13 of the NGR Agreement in concert with the PPA. The pricing of renewable attributes under
14 the NGR Agreement may reflect a blending of the prices secured under the two separate
15 agreements.

16 The HLF tariff requires a term commitment to remain a bundled retail customer of
17 Nevada Power. Pursuant to this Stipulation, the Signatories agree that the term will not
18 commence until such time as the Commission approves the NGR Agreement and the
19 attendant PPA, and the advice letter filed by NV Energy regarding the HLF. However, in
20 the interest of reaching agreement, the Signatories agree that Switch may elect to enjoy the
21 HLF tariff in advance of the term commencing. If the Agreements and Tariff Amendment
22 are approved by the Commission Switch will then be subject to the term commitment.

23 In order to obtain necessary Commission approval of the Settlement Package,
24 Nevada Power will: 1) File an advice letter with the Commission to make certain changes to
25 the HLF tariff; 2) File a petition or application with the Commission to seek approval of the
26 NGR Agreement; and 3) Otherwise seek approval of the PPA within Docket No. 15-07003.
27 To bring finality to this matter, the Signatories respectfully request that the Commission
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Nevada Power Company
and Sierra Pacific Power Company
d/b/a NV Energy

1 expedite its review of the NGR Agreement, PPA and HLF Tariff Advice Letter, such that its
2 review be completed on or before October 5, 2015. To facilitate the Commission's review
3 of the Settlement Package and the associated agreements, and preserve the vast resources
4 expended in this Docket, the Signatories request a procedural stay of this Docket. More
5 specifically, the Signatories seek a deviation from the deadlines under NAC 704.801(4) and
6 (5), and agree that good cause exists for such deviation, to stay the 40 day deadline for the
7 Commission to grant or deny Switch's Petition for Reconsideration.

8 Upon Commission approval of the Settlement Package (this Stipulation, the NGR
9 Agreement, the PPA, the HLF Agreement (together, the "Agreements") and the HLF tariff
10 advice letter filing (the "Tariff Amendment"), with terms satisfactory to Nevada Power and
11 Switch, Switch will withdraw its Petition for Reconsideration of the Order denying Switch's
12 application filed in Docket No. 14-11007. Such withdrawal shall be without prejudice with
13 respect to Switch filing a new application pursuant to NRS Chapter 704B and as provided in
14 the Commission's Order in Docket No. 14-11007.

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RECITALS

17 WHEREAS, on November 7, 2014, Switch filed an Application with the Commission
18 under Nevada Revised Statute ("NRS") Chapter 704B seeking approval of a proposed
19 transaction pursuant to which Switch would no longer take bundled retail service from Nevada
20 Power and would instead purchase energy, capacity, and/or ancillary services from a provider
21 of new electric resources;

22 WHEREAS, the Staff is a party of right to this proceeding pursuant to NRS 703.301,
23 and Nevada Power sought and was granted leave to intervene in this proceeding pursuant to
24 NAC 704B.310;

25 WHEREAS, between November 7, 2014 and May 22, 2015, the parties to this
26 Stipulation have fully explored the issues raised by Switch's Application through discovery,
27 prepared direct and rebuttal testimony, hearings and legal briefs, and the parties continued to
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d/b/a NV Energy

1 discuss possible alternatives, including the HLF tariff (which became effective on January 1,
2 2015) and the NGR tariff (which became effective on October 27, 2014);

3 WHEREAS, the Commission denied Switch’s application without prejudice on June
4 11, 2015 and Switch has filed a Petition for Reconsideration;

5 WHEREAS, Switch desires to be served with green energy over and above the
6 requirements of Nevada’s Renewable Portfolio Standard (“RPS”);

7 WHEREAS, under the conditions set forth below, the Signatories desire to resolve all
8 issues raised in the case, and believe such resolution to be in the public interest, in the manner
9 set forth herein;

10 NOW THEREFORE, in light of the foregoing recitals and in consideration of the
11 promises set forth below, the Signatories agree as follows:

12
13 **AGREEMENT**

14 **A. Optional HLF Tariff**

15 1. Within 10 business days after Commission approval of this Stipulation, Nevada
16 Power shall move all Switch eligible accounts identified on Exhibit A to the Schedule OLGS-
17 3P-HLF Agreement, attached hereto as Attachment 1.

18 2. Special Condition 9 of the HLF tariff requires a customer to remain a “bundled,
19 full requirement Customer of” Nevada Power for a “minimum of five years (60 billing periods)
20 *from the date of commencement of service* under” Schedule OLGS-3P-HLF. NV Energy shall,
21 within three business days of filing this Stipulation with the Commission, file an advice letter
22 with the Commission requesting a modification of OLGS-3P-HLF that provides a three year
23 minimum commitment to bundled full requirements service. However, because the Settlement
24 Package contemplates that Switch will not only take service from Schedule HLF, but will take
25 service under the NGR tariff, and because the terms of the NGR tariff require Commission
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and Sierra Pacific Power Company
d/b/a NV Energy

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approval of all agreements executed under the NGR tariff, the Signatories acknowledge that a limited waiver of this provision of the HLF tariff to allow for commencement of the commitment term on the date the Commission approves the Settlement Package including the Tariff Amendment in a manner acceptable to Switch and Nevada Power is necessary.

3. On a going forward basis, Nevada Power will review Switch's loads on all remaining accounts to determine such accounts' eligibility for the HLF tariff. Pursuant to Special Condition 8 of the HLF tariff, when a remaining account with load growth achieves or can demonstrate a 75 percent or greater load factor as contemplated in the HLF tariff the account will be eligible to move to the HLF tariff. Annually, Nevada Power shall file with the Commission an amendment to Attachment A to the HLF agreement identifying any accounts added to service under the agreement.

4. Pursuant to Special Condition 11 of the HLF tariff, Switch may move an account to a more favorable rate schedule (if one exists) after twelve months of service under the HLF schedule. Nevada Power annually will monitor all of Switch's accounts and will notify Switch of its eligibility to move a Switch account or accounts to the most advantageous tariff available. Switch will notify Nevada Power should it wish to move any account or accounts to another rate schedule and Nevada Power will move the eligible account within 30 days.

5. Switch will not be obligated to continue to take service under the HLF tariff unless the Commission subsequently approves in a manner reasonably acceptable to both Nevada Power and Switch the Settlement Package including the Tariff Amendment.

B. Green Energy Pricing and Nevada Green Energy Rider Agreement

Nevada Power Company
and Sierra Pacific Power Company
d/b/a NV Energy

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6. In order to begin to meet Switch's desire to be served with green energy over and above the requirements of the Nevada RPS prior to the Commission's action on the NGR Agreement described in Paragraph 8 below, Nevada Power and Switch contemplate entering into a market purchase for Renewable Energy Credits as more particularly described in Section 5 of the NGR Agreement subject to the following:

A. If the Commission does not approve the NGR agreement, and if the cost of Renewable Energy Credits purchased on behalf of Switch is less than what NV Energy has recovered under the Renewable Resource Rate as contained in the NGR Agreement, Nevada Power will refund to Switch the difference between the actual cost of procuring such Renewable Energy Credits and the Renewable Resource Rate as more particularly described in Section 5 of the NGR Agreement. If the cost of Renewable Energy Credits exceeds what has been recovered by NV Energy under the Renewable Resource Rate, Switch shall pay NV Energy for the Renewable Energy Credits as described in Section 5 of the NGR Agreement.

B. Signatories acknowledge that Nevada Power may proceed with the market purchase of Renewable Energy Credits as described in Section 7 of this Stipulation and Section 5 of the NGR Agreement upon Commission approval of this Stipulation and prior to Commission approval of the remaining portions of the NGR Agreement.

7. Switch and Nevada Power have executed a NGR Agreement which includes two transactions, first the purchase of stand-alone RECs or PECs for the first three years (2015-2017) as described in Section 7 of the Stipulation and Section 5 of the NGR Agreement and second, the purchase of the full output of the Portfolio Energy Credits set forth in the PPA starting on or before December 31, 2016, subject to the terms of the PPA. Nevada Power filed

1 with the Commission an integrated resource plan amendment seeking approval of the PPA
2 described herein on July 1, 2015, which has been assigned Docket No. 15-07003. Nevada
3 Power will submit the NGR Agreement to the Commission for approval and seek expedited
4 review of the NGR Agreement by filing a separate petition or application within 5 business
5 days of the Commission's approval of this Stipulation. The Signatories will cooperate in
6 seeking the Commission's expedited review of the Agreements and Tariff Amendment.

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8 8. The Signatories agree that this Stipulation is in the public interest. The
9 Signatories agree to use reasonable efforts to seek Commission approval of this Stipulation and
10 the Settlement Package. Staff reserves the right to review the Agreements or Tariff
11 amendment in light of the information filed by Nevada Power in its integrated resource plan,
12 emission reduction capacity replacement amendment and in connection with the Settlement
13 Package. The Signatories recognize that Switch may withdraw its support of this Stipulation if
14 it determines that approval of the Settlement Package by the Commission is unlikely, and may
15 request that the Commission proceed with consideration of the Petition for Reconsideration
16 under NAC 704.801(4) and (5). In such case, in light of the time spent to date, Switch is
17 amenable to the Commission acting within 30 days of receiving written notice to proceed from
18 Switch, to grant or deny Switch's Petition for Reconsideration.

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21 **C. Rates**

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23 9. On May 15, 2015, Nevada Power provided Switch a rate forecast covering the
24 period between June 2015 and June 2019.

25 10. The projected prices shown in such forecast were developed by Nevada Power
26 for the purpose of planning and operating its business, and for the benefit of Switch in
27 estimating their costs as a bundled customer of Nevada Power.

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1 11. With the exception of the NGR Renewable Resource Rate as defined in the
2 NGR tariff, which will be fixed at the time the Commission approves the NGR Agreement, the
3 rates that Nevada Power charges to Switch will continue to be set by the Commission and will
4 fluctuate consistent with Nevada Power's rate schedules. However, while Nevada Power
5 agrees to exercise reasonable efforts to manage its business practices in the manner necessary
6 to achieve the rates included in the rate forecast, Nevada Power has not promised that Switch,
7 nor any other customer, will actually realize the specific costs set forth in the rate forecast.
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9 **D. Bundled Rate Customer**

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11 12. Upon Commission approval of the NGR agreement, Switch will confirm its
12 commitment to remain a bundled, full requirement customer of Nevada Power for the
13 period required by the Agreements and the applicable tariffs, for the accounts set forth on
14 Exhibit A to Attachment 3, per the HLF tariff.
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16 **E. Deviations for Timing; Withdrawal of Petition for Reconsideration**

17 13. The Signatories seek a deviation from the deadlines under NAC 704.801(4)
18 and (5), and agree that good cause exists for such deviation, to postpone the Commission's
19 deadline to grant or deny Switch's Petition for Reconsideration until the Commission
20 approves or denies the entire Settlement Package without material modification. Within
21 three business days of the Commission approving the entire Settlement Package (including
22 the HLF Agreement, HLF advice letter, NRG Agreement, PPA and this Stipulation), in a
23 manner acceptable to Switch, Switch shall withdraw its Petition for Reconsideration of the
24 Application in this Docket 14-11007, and the order denying Switch's Application without
25 prejudice will stand. If the Commission does not approve the entire Settlement Package or
26 conditions the approval of the Settlement Package in a manner unacceptable to Switch or
27 Nevada Power, either Nevada Power or Switch may send a request to the Commission that
28 the Commission act on the Petition for Reconsideration. In such case, Switch is amenable

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and Sierra Pacific Power Company
d/b/a NV Energy

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to the Commission acting on the Petition for Reconsideration within 30 days of the Commission receiving the written request to act from Switch.

G. General Provisions

14. This Stipulation will not serve as precedent for the resolution of any issue in the future by the Commission.

15. This Stipulation is entered into for the purpose of resolving all remaining issues in the Docket by and among the Signatories as set forth above. This Stipulation is made upon the express understanding that it constitutes a negotiated settlement. The provisions of this Stipulation are not severable.

16. In accordance with NAC 703.845, this Stipulation settles only issues relating to the present proceedings and seeks relief that the Commission is empowered to grant.

17. Each Signatory, by signing this Stipulation, agrees that the resolution of the issues raised in this proceeding, as set forth herein, is in the public interest.

18. This Stipulation represents a compromise of the positions of the Signatories. As such, conduct, statements and documents disclosed in the negotiation of this Stipulation will not be admissible as evidence in this Docket or any other proceeding. Except as set forth herein, neither this Stipulation, nor its terms, nor the Commission's acceptance or rejection of the terms contained in this Stipulation will have any precedential effect in future proceedings.

19. This Stipulation may be executed in one or more counterparts, all of which together will constitute the original executed document. This Stipulation may be executed by Signatories by electronic transmission, which signatures will be as binding and effective as original signatures.

This Stipulation is entered into by each Signatory as of the date entered below:

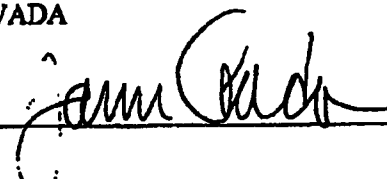
Nevada Power Company
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d/b/a NV Energy

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NEVADA POWER COMPANY

Date 7/10/15 
By: Doug Cannon

REGULATORY OPERATIONS STAFF OF
THE PUBLIC UTILITIES COMMISSION OF
NEVADA

Date July 10, 2015 
By:

SWITCH, LTD.

Date _____
By: Samuel Castor
Associate General Counsel

Nevada Power Company
and Sierra Pacific Power Company
d/b/a NV Energy

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NEVADA POWER COMPANY

Date

By: Doug Cannon

REGULATORY OPERATIONS STAFF OF
THE PUBLIC UTILITIES COMMISSION OF
NEVADA


Date

By:

SWITCH, LTD.

7/10/15

Date



By: Samuel Castor
Associate General Counsel

ATTACHMENT 1
HLF AGREEMENT



AGREEMENT FOR ELECTRIC SERVICE UNDER RATE SCHEDULE OLGS-3P-HLF

This Agreement for Schedule OLGS-3P-HLF Electric Service ("Agreement") is entered into by and between Nevada Power Company d/b/a NV Energy ("NV Energy") and Switch, Ltd., whose service address is 7135 S. Decatur Blvd., Las Vegas, NV 89118 ("Customer"). NV Energy and Customer are referred to individually as "Party" and collectively as "Parties." The Agreement is effective as of the date it is executed by both Parties.

This Agreement is based upon the following facts:

- A. NV Energy is currently providing electric service to Customer, and Customer is currently receiving electric service from NV Energy under Rate Schedule ("Schedule") No. LGS-3, primary voltage;
- B. NV Energy, is offering to provide electric service under the optional Schedule No. OLGS-3P-HLF to customers that meet the requirements of that schedule;
- C. Certain Customer accounts meet the requirements of OLGS-3P-HLF; and
- D. NV Energy is willing to provide electric service to Customer, and Customer wishes to receive electric service to certain accounts, under the terms and conditions of Schedule No. OLGS-3P-HLF and this Agreement.

In consideration of the facts and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. A copy of the currently effective Schedule No. OLGS-3P-HLF is attached to this Agreement and incorporated into it by reference.
2. The Parties understand and agree that service under Schedule No. OLGS-3P-HLF and this Agreement applies only to those electric service accounts listed on Exhibit A, which is attached hereto and incorporated by reference.
3. If additional metering equipment is required for service under Schedule No. OLGS-3P-HLF, it will be installed at the cost of NV Energy. Such metering may include time-of-use, energy, demand, reactive, and any recording devices deemed necessary by NV Energy. Customer shall provide NV Energy reasonable access during normal business hours to install metering. NV Energy shall comply with

Customer's reasonable confidentiality, safety and security protocols while accessing Customer locations.

4. Service under Schedule No. OLGS-3P-HLF and this Agreement will not commence until (a) Customer executes this Agreement; (b) the installation of necessary metering, if required, pursuant to Paragraph 2 of this Agreement is completed; and (c) the Customer Specific Facilities investment amounts described in Special Condition 7 of Schedule No. OLGS-3P-HLF can be reasonably determined and are approved by the Commission and become effective. It is estimated that service to Customer under Schedule No. OLGS-3P-HLF and this Agreement will commence within ten (10) days after the Commission approves a settlement agreement in Docket 14-11007.
5. NV Energy will conduct an annual review of the electric usage of the accounts listed on Exhibit A.
6. Service to the accounts listed on Exhibit A shall be moved from Schedule No. OLGS-3P-HLF to another schedule if the accounts listed on Exhibit A do not continue to meet the minimum annual load factor specified in Schedule No. OLGS-3P-HLF.
7. The parties will comply with the terms of Schedule No. OLGS-3P-HLF.
8. The accounts served under Schedule No. OLGS-3P-HLF will be subject to the rates and charges established for that schedule, as adjusted time-to-time by the Public Utilities Commission of Nevada, including but not limited to the following: (a) a possible power factor charge or credit, (b) a Demand Charge, (c) a per kW facilities charge, and (d) a Customer Specific Facilities Charge.
9. Customer releases NV Energy, its directors, officers, employees, and affiliates from any and all liability not proximately caused by the negligence of or caused by the intentional misconduct of NV Energy. NV Energy shall not be liable to Customer for any direct, indirect, or consequential damages to Customer resulting from or arising out of electric service provided under this Agreement.
10. This Agreement represents the entire understanding of the Parties and any modification shall not be effective unless set forth in writing and signed by both Parties.
11. In the event of any inconsistency or conflict, not otherwise set forth in this Agreement, between this Agreement and the terms of Schedule No. OLGS-3P-HLF, the terms of Schedule No. OLGS-3P-HLF shall control.

12. **Governing Law; Venue.** This Agreement is governed by and must be construed in accordance with the laws of the State of Nevada, without giving effect to its conflict of law provisions. Nothing in this agreement is designed to eliminate the PUCN's jurisdiction over matters within its jurisdiction. In the event a court of competent jurisdiction has jurisdiction over a civil action or remedy brought under this Agreement, the Parties agree that they will first seek to initiate such action in the federal district court of Nevada with jurisdiction over Clark County, Nevada. In the event the federal district court lacks jurisdiction over such a dispute, the parties agree the dispute will be brought in the Nevada state district court for Clark County, Nevada in Las Vegas, Nevada. Both Parties agree that they will not initiate an Action against the other Party in any other jurisdiction.
13. 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 jury trial cannot be or has not been waived.
14. Notwithstanding any other provisions of this Agreement, NV Energy may file with the PUCN, pursuant to the PUCN's rules and regulations, an application for a change in rates, charges, classification of service, or any rule, regulation, or agreement relating thereto. If NV Energy obtains a material change that adversely effects Customer in a non-pricing term or condition of service, excluding changes in rates, provided in the Schedule OLGS-3P-HLF during the term of this Agreement, Customer may choose to terminate service under Schedule OLGS-3P-HLF and take service under another applicable schedule without violating the terms of this Agreement or Schedule OLGS-3P-HLF.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto enter into this Agreement as of the date it has been executed by both Parties below.

COMPANY

CUSTOMER

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

SWITCH, LTD.

Signature: 

Signature: _____

Name: PAUL CANNON

Name: _____

Title: RESIDENT JOB

Title: _____

Date: 6/24/15

Date: _____

IN WITNESS WHEREOF, the Parties hereto enter into this Agreement as of the date it has been executed by both Parties below.

COMPANY

CUSTOMER

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

SWITCH, LTD.

Signature: _____

Signature: _____

Name: _____

Name: ROB ROY

Title: _____

Title: CEO

Date: _____

Date: 6/29/15

Legal:  _____ Date: _____

EXHIBIT A

**TO AGREEMENT FOR ELECTRIC SERVICE UNDER
SCHEDULE NO. OLGS-3P-HLF**

APPLICABLE ELECTRIC SERVICE ACCOUNTS

<u>ACCOUNT NUMBER</u>	<u>PREMISE NUMBER</u>	<u>SERVICE ADDRESS</u>
2257109-2193699	2193699	7135 S Decatur Blvd, Suite S1, Las Vegas NV 89118
2257109-2239518	2239518	7135 S Decatur Blvd, Suite S2, Las Vegas NV 89118
2257109-2248194	2248194	7135 S Decatur Blvd, Bldg. 5, Las Vegas NV 89118
2257109-2253743	2253743	7135 S Decatur Blvd, Bldg. DF6, Las Vegas NV 89118
2257109-2261555	2261555	7135 S Decatur Blvd, Suite S8, Las Vegas NV 89118
2257109-2271616	2271616	7135 S Decatur Blvd, Suite S3, Las Vegas NV 89118
2257109-2265112	2265112	5225 W Capovilla Ave, Suite S1, Las Vegas NV 89118
2257109-2273939	2273939	5225 W Capovilla Ave, Suite S12, Las Vegas NV 89118

ATTACHMENT 2
NGR AGREEMENT

RENEWABLE ENERGY AGREEMENT

This **RENEWABLE ENERGY AGREEMENT**, dated as of June __, 2015 (the "Effective Date"), is made by and between **NEVADA POWER COMPANY dba NV Energy**, a Nevada corporation ("NV Energy"), and **SWITCH Ltd.**, a Nevada limited liability company ("Customer"). NV Energy and Customer are also each referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, NV Energy is an electric service provider, as defined in NRS Section 704;

WHEREAS, Customer is currently taking retail electric service for its data centers located at various addresses in southern Nevada including 7135 South Decatur Blvd, (the "Data Centers") as identified as the NV Energy accounts described in Exhibit A, from NV Energy under the applicable tariff rate;

WHEREAS, Customer desires to operate the Data Center utilizing renewable energy resources;

WHEREAS, the Parties desire to enable Customer to achieve its renewable energy objectives and believe those objectives can be achieved through a transaction structured in a manner that provides the same result - provide a mechanism to realize Portfolio Energy Credits from a new renewable generation resource (the "Switch Station") constructed in Nevada and delivering energy to Nevada - as that transaction previously approved by the Public Utilities Commission of Nevada ("PUCN") in Docket No. 13-07005 (renewable energy transaction between Sierra Pacific Power Company and Apple Inc.), while at the same time not burdening other customers of NV Energy;

WHEREAS, Customer has requested to utilize NV Energy's electric service Tariff Schedule No. NGR - Schedule NV GreenEnergy Rider (the "NGR Tariff"), which contemplates a LGS-1 or higher retail customer entering into a special contract with NV Energy that provides for dedication to said retail customer account of a renewable energy resource contracted by NV Energy;

WHEREAS, the Customer has one or more accounts that are LGS-1 or higher retail accounts;

WHEREAS, consistent with the terms of the NGR Tariff, NV Energy has entered into a power purchase agreement ("Power Purchase Agreement") with First Solar for the Playa 2 photovoltaic solar electric generation facility, with a total nameplate capacity of 100 megawatts alternating current (the "Solar Arrays")

WHEREAS, the parties anticipate, based on Customer's existing load, that the Solar Arrays will provide sufficient Portfolio Energy Credits to satisfy Customer's green initiatives for existing load,

WHEREAS, the parties may negotiate the construction of additional 100 megawatt solar arrays to provide sufficient Portfolio Energy Credits so that Customer can support additional, new, local, renewable generation to meet Customer's future load and,

WHEREAS, it is the intent of the Parties that this Agreement serve as the agreement between the Parties under the NGR Tariff to facilitate Customer contracting for the Portfolio Energy Credits

Green Rider Agreement

associated with the output of the Solar Arrays for the term of the Power Purchase Agreement between NV Energy and the First Solar;

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

AGREEMENT

1. **DEFINITIONS.** As used in this Agreement, defined terms shall have the meaning set forth in this Agreement or as set forth in this Section 1.

1.1 "Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

1.2 "Affiliate" means, with respect to NV Energy, "Affiliate" shall only include Berkshire Hathaway Energy and its direct and indirect wholly-owned subsidiaries and with respect to Customer the wholly owned subsidiaries of Switch, Ltd.

1.3 "Agreement" means this Renewable Energy Agreement together with the Schedules and Power Purchase Agreement attached hereto.

1.4 "Business Day" means any day, other than a Saturday, Sunday or legal holiday, on which commercial banks in Clark County, Nevada are generally open for the transaction of business.

1.5 "Contract Year" means each year during the Term beginning on January 1 and ending on December 31 of the calendar year following the Commercial Operation Date.

1.6 "Data Centers" has the meaning set forth in the recitals hereto.

1.7 "Event of Default" has the meaning set forth in Section 11.1.

1.8 "Force Majeure" has the meaning set forth in Section 8.

1.9 "Governmental Entity" means any federal, state, or local government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

1.10 "kWh" means kilowatt-hour.

1.11 "NGR Tariff" has the meaning set forth in the recitals hereto.

1.12 "NRS" means the Nevada Revised Statutes, as amended.

1.13 **"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 Solar Arrays, 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 Entity 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.

1.14 **"PC Administrator"** means the Person appointed by the PUCN to administer the system of Portfolio Energy Credits established pursuant to the Renewable Energy Law or 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 users or utility providers in Nevada.

1.15 **"Permitted Transferee"** means an Affiliate of either Party to this Agreement.

1.16 **"Person"** means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, Governmental Entity, or other entity.

1.17 **"PUCN"** means the Public Utilities Commission of Nevada and any successor entity thereto.

1.18 **"Renewable Energy Credit"** means a unit of credit which equals one kilowatt-hour of electricity generated, acquired or saved (or deemed so) by the Solar Arrays and certified by WREGIS.

1.19 **"Renewable Energy Law"** means an act of the Nevada Legislature relating to energy, or law that affects Customer's renewable energy consumption or that requires certain electric service providers to comply with the portfolio standard for renewable energy, and providing for other matters relating thereto, codified as NRS 704.7801 through 704.7828, inclusive, and the rules and regulations of WREGIS, and the regulations, guidance and other requirements promulgated thereunder, in each case as such laws, regulations, guidance and requirements may be amended, preempted or superseded.

1.20 **"Renewable Resource Rate"** means the fixed rate, in dollars per kWh, set forth in Schedule 1.20 attached hereto.

1.21 **"Solar Arrays"** has the meaning set forth in the recitals hereto.

1.22 **"Tax" or "Taxes"** means the applicable 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.

1.23 **"Term"** has the meaning set forth in Section 2.1.

1.24 **“WREGIS”** means the Western Renewable Energy Generation Information System, or a successor organization or system.

2. TERM AND TERMINATION.

2.1 **Term.** With Respect to Section 5, this Agreement shall commence upon the date Customer notifies NV Energy it wishes to proceed with the Renewable Energy Credit transaction described in Section 5. Otherwise, this Agreement commences on the date this Agreement is approved by the PUCN. This Agreement will expire on the date that the Power Purchase Agreement with First Solar expires (20 years from the date of Commercial Operation as defined in the power purchase agreement between NV Energy and First Solar dated June 19, 2015 (the “Power Purchase Agreement”), or as otherwise provide in the Power Purchase Agreement) or such Power Purchase Agreement is no longer in effect (the “Term”), unless extended by mutual written agreement of the Parties.

3. DATA CENTERS ENERGY SUPPLY.

3.1 **Transfer of Portfolio Energy Credits.** Commencing on the earliest date NV Energy is obligated to take energy from the Solar Arrays as provided in the terms of the Power Purchase Agreement (the “Commencement Date”), NV Energy shall transfer to Customer the Portfolio Energy Credits realized from the Solar Arrays and to which NV Energy is entitled under the Power Purchase Agreement. Customer shall pay the Renewable Resource Rate for each kWh of Portfolio Energy Credits transferred from NV Energy to Customer as provided herein.

3.2 **PC Deficiency.** If, in any Contract Year following the Commencement Date, the Portfolio Energy Credits available from the Solar Arrays are less than the electric energy consumed at the Data Centers (such that the Solar Array Portfolio Energy Credits purchased by Customer under this Agreement in respect of such Contract Year do not fully offset such electric consumption), NV Energy will negotiate in good faith to sell to Customer Portfolio Energy Credits, at the Renewable Resource Rate, through NV Energy attributable to NV Energy renewable generating resources other than the Solar Arrays, up to an amount of Portfolio Energy Credits sufficient to satisfy the deficiency, but subject in all cases to the availability of Portfolio Energy Credits to NV Energy for this purpose and obtaining any governmental approvals if required, and giving priority to NV Energy’s need for Portfolio Energy Credits to cover its current and anticipated future renewable portfolio or other legal obligations, as determined by NV Energy in its sole discretion (exercised in good faith). Alternatively, Customer may, in its discretion, satisfy the deficiency through purchases of Portfolio Energy Credits from third parties, or from NV Energy pursuant to the terms of any available tariff schedule approved or adopted by the PUCN for the sale of Portfolio Energy Credits.

3.3 In addition to Section 3.2, in the event NV Energy intends to contract for or construct incremental future renewable energy generation, NV Energy will alert Customer in advance of such construction and provide Customer the opportunity to support such renewable generation by negotiating a NGR Agreement to facilitate the purchasing of Portfolio Energy Credits from that renewable facility in a form consistent with the terms of this Agreement and at a renewable resource rate, calculated using the same methodology applied in calculating the Renewable Resource Rate.

3.4 **Surplus Portfolio Energy Credit Right of First Refusal.** NV Energy grants Customer during the period this Agreement remains in effect, a right of first refusal (“ROFR”) to purchase

Portfolio Energy Credits from NV Energy that NV Energy makes available to another buyer, excluding a sale to another customer that enters into an NGR Agreement, at the same price NV Energy is making the Portfolio Energy Credits available to the other buyer if that other buyer is a customer of NV Energy or at five (5) percent less than the offer price of the other buyer if the buyer is not a customer of NV Energy. In the event NV Energy elects to sell Portfolio Energy Credits to another buyer, NV Energy shall provide notice to Customer identifying the vintage, source, quantity and price of Portfolio Energy Credits are being sold and whether the buyer is or is not a customer. Customer shall have three (3) Business Days in which to indicate whether they will purchase the Portfolio Energy Credits at the price provided in this Section 3.4. To facilitate additional opportunities for Portfolio Energy Credit transactions, NV Energy, in years that NV Energy's PUCN approved annual Portfolio Energy Credit compliance filing shows that NV Energy has more than a twenty-five (25) percent surplus of Portfolio Energy Credits ("Surplus"), NV Energy shall hold, once a year, if requested by Customer in writing, a request for proposals to solicit bids to purchase those Portfolio Energy Credits above the Surplus, in no case reducing NV Energy's Portfolio Energy Credit balance below the Surplus, as determined in the reasonable discretion of NV Energy. NV Energy shall make the bids (without bidder names) available to Customer, along with whether the bidder is a customer or non-customer, within ten (10) days of the conclusion of the request for proposals. Customer shall notify NV Energy within three (3) business days of receiving the bid information whether Customer shall exercise its ROFR and purchase the Portfolio Energy Credits. If the highest bid is a customer of NV Energy, Customer shall match the price of the highest bid. If the highest bidder is not a customer of NV Energy, Customer shall pay five (5) percent less than the highest bid for the Portfolio Energy Credits. Customer shall make a one-time payment for any Portfolio Energy Credits purchased under this section 3.4, plus applicable transfer fees (i.e. WREGIS transfer and registration fees), within 30 days of purchasing such Portfolio Energy Credits. The quantity of Portfolio Energy Credits purchased from NV Energy by the Customer from all sources described in this Agreement shall not exceed 100% of the Customer's energy consumption from the Data Centers at the time of the purchase of the Portfolio Energy Credit or the Renewable Energy Credit. All Portfolio Energy Credit transactions with NV Energy are subject to approval of the PUCN. The Parties will cooperate in good faith to obtain approval of any transaction facilitated under this section 3.4 from the PUCN. Customer acknowledges that the ROFR is subject to availability, is non-exclusive, and may be exercised in concert with the same ROFR rights of other NGR Tariff customers who are granted the same ROFR terms into their NGR Tariff agreement with NV Energy, such that if surplus is limited, the available surplus Portfolio Energy Credits will be provided to Customer and other customers on a pro-rata basis consistent with such availability due to other NGR Tariff customer's exercising of their right of first refusal. Nothing in this section 3.4 prohibits NV Energy from entering into additional NGR Agreements.

3.5 Customer Acknowledgements. Customer acknowledges and agrees that:

3.5.1 Customer is committing to purchase from NV Energy, under the NGR Tariff, all available Portfolio Energy Credits associated with the Solar Arrays from the Commencement Date through the period the Power Purchase Agreement is effective, but not to exceed Customer's total electric load from the Data Centers. Except for the PCs provided to Customer as expressly provided herein NV Energy shall retain all energy, capacity and all other attributes associated with the Solar Arrays or any production therefrom;

3.5.2 Customer shall receive bundled electric service from NV Energy under the tariff applicable to the Customer pursuant to the terms of that tariff. Notwithstanding anything to the contrary

in this Agreement, Customer is not receiving electric service from the Solar Arrays under the Power Purchase Agreements or under this Agreement;

3.5.3 This Agreement is entered into pursuant to the NGR Tariff and all terms and conditions of the NGR Tariff are incorporated into this Agreement by this reference. It is the intent of the Parties that this Agreement complies with the terms and conditions of the NGR Tariff and this Agreement shall be interpreted consistent with the terms of the NGR Tariff.

3.6 Naming and Publicity Rights of the Solar Arrays. During the Term of this Agreement or an extension thereof, subject to NV Energy's naming and publicity rights for the Solar Arrays from First Solar: (1) the Solar Arrays shall be called "Switch Station", subject to the approval of First Solar; (2) Customer will have a non-exclusive license, along with the publicity rights of First Solar and NV Energy, to utilize the name, images and public information regarding the Solar Arrays to advertise and promote the Solar Arrays as Switch Station; (3) Customer shall have the right to place reasonable signage at the Solar Arrays identifying the Solar Arrays as "Switch Station". Customer shall obtain approval of all advertising, promotional or educational materials, press releases and signage relating to the Solar Arrays from NV Energy prior to publication or utilization of such materials, such approval to not be unreasonably withheld, conditioned or delayed. NV Energy will obtain the approval of Switch prior to NV Energy allowing a third party (not including First Solar) to utilize the name, images and public information regarding the Solar Arrays, which consent Switch will not unreasonably withhold, condition or delay. Customer acknowledges the NV Energy approval may also include NV Energy providing the materials to First Solar for its approval, subject to the contractual rights between NV Energy and First Solar. NV Energy shall, subject to its contractual rights with First Solar, make reasonable efforts to make the site accessible to Customer for tours during normal business hours, upon reasonable notice and subject to safety and operational conditions at the Solar Arrays as such conditions may be established by NV Energy and First Solar.

4. RENEWABLE ENERGY BENEFITS.

4.1 Price. For the Term, Customer shall pay the Renewable Resource Rate, as set forth in Schedule 1.20, for each kWh of Portfolio Energy Credit transferred by NV Energy to Customer hereunder.

4.2 Certification of Renewable Energy Benefits. NV Energy will take such commercially reasonable actions as may be necessary and appropriate to cause WREGIS and the PC Administrator to certify or otherwise validate in a timely manner all Portfolio Energy Credits sold by NV Energy to Customer under this Agreement. The Parties acknowledge and agree that the certification of Portfolio Energy Credits is registry dependent, and that the timing of certification is solely at the registry's discretion. NV Energy shall not be held liable for certification delays or denials beyond its control, provided NV Energy will, as provided in Section 3.2, make efforts to provide alternative Portfolio Energy Credits to provide replacement Portfolio Energy Credits denied certification within 30 days following such denial. Such replacement Portfolio Energy Credits will be from the same energy production year as the credits denied certification. Any replacement Portfolio Energy Credits provided to Customer shall be charged to Customer at the Renewable Resource Rate. Customer will pay for such replacement Portfolio Energy Credits, once transferred to Customer's WREGIS account.

4.3 Monthly Invoices. Beginning the month after the first month in which NV Energy transfers to Customer any Portfolio Energy Credits from the Solar Arrays, an invoice will be sent to Customer, showing the kWh generated by the Solar Arrays during the previous calendar month, the Renewable Resource Rate and any other applicable Taxes or fees imposed by a Governmental Entity, WREGIS (or similar registrant) or the PC Administrator relating to the Portfolio Energy Credits or service under the NGR Tariff. Each such monthly invoice will set forth the total amount payable by Customer for the Portfolio Energy Credits. Except for replacement Portfolio Energy Credits, which shall be payable as provided in Section 4.2, the amount due shall be payable regardless of the status of any certification of, or transfer procedures with respect to, any such Portfolio Energy Credits. The monthly invoice shall be provided to Customer by the method or methods authorized by the Nevada Power Tariff.

4.4 Payment Terms. The otherwise applicable payment terms as issued on each monthly NV Energy invoice, as provided by Nevada Power Tariff or other agreement of the Parties, will apply to all amounts due under this Agreement. At any time a dispute arises with respect to a payment or other obligation under this Agreement, at the written request of either Party, the Parties' senior executives must meet and attempt to resolve such dispute within ten (10) Business Days of a Party receiving that written request; and, during that 10-business-day period, all consequences associated with any delay in payment will be forestalled pending resolution. Notwithstanding anything to the contrary in this Agreement, NV Energy will not cease providing Portfolio Energy Credits to Customer as a result of a dispute without first exerting commercially reasonable efforts to meet and confer as provided in this Section 4.4 during that 10-business-day period. If the Parties meet and despite each party's good faith effort to resolve the dispute, the senior team members are unable to reach agreement, the payment dispute shall be resolved as provided in the Nevada Power Tariff.

4.5 Transfer of Portfolio Energy Credits. NV Energy will obtain certification through WREGIS of all kWh generated by the Solar Arrays. NV Energy will transfer such WREGIS credits to a WREGIS account designated by Customer within thirty (30) days following the later to occur of (a) NV Energy's receipt of payment from Customer under Section 4.3 for the corresponding kWh of electric energy output of the Solar Arrays, and (b) certification of such credits by WREGIS, in all cases in accordance with and subject to the transfer procedures established by WREGIS. Notwithstanding the foregoing, the Parties may elect such other transfer procedures for Portfolio Energy Credits as the Parties may mutually agree, acting reasonably, provided that NV Energy shall not be required to incur any additional costs or expense for such Portfolio Energy Credits or the transfer thereof. Customer may transfer the Portfolio Energy Credits acquired from the Solar Arrays or from the Short Term Portfolio Energy Credit Agreement specified in Section 5 of this Agreement to or retire such Portfolio Energy Credits in the name of Customer's customers, proportionate to the customer's portion of the Customer's electric load. Customer shall be responsible for the registration, administration and transfer, and all associated costs, of any Portfolio Energy Credits transferred to or retired in the name of its customers.

4.6 Refund if Portfolio Energy Credits Rejected. In the event Portfolio Energy Credits from the Solar Arrays for which Customer has paid NV Energy are not accepted by WREGIS, NV Energy shall refund to Customer, by providing a credit on the Customer's next monthly bill in an amount equal to the Renewable Resource Rate (on a per kWh basis) times the kWh of Portfolio Energy Credits rejected by WREGIS. Customer may also acquire replacement Portfolio Energy Credits as provided in Section 3.2.

4.7 **Renewable Energy Credit Cap.** Customer may purchase under the NGR Tariff the portfolio energy credits not to exceed the Customer's monthly total energy consumption at the Data Centers.

4.8 **Letter Certifying Consistency.** NV Energy shall provide Customer a letter in the form contained in Attachment A, stating that the transaction contemplated in this Agreement is intended to result in a 100% renewable portfolio energy credit solution consistent with the transaction approved by the PUCN in Docket No. 13-07005 (Sierra Pacific Power Company renewable energy transaction with Apple, Inc.).

5. **SHORT TERM RENEWABLE ENERGY CREDIT AGREEMENT**

5.1 At Customer's request, NV Energy shall for the benefit of Customer issue a request for proposals for Renewable Energy Credits that are associated with current year energy production. The request shall seek Renewable Energy Credits for 2015, 2016 and 2017. NV Energy will issue the RFP within 30 days of Customer's request, in the method, manner, and seeking the quantities, and qualities of Renewable Energy Credits reasonably identified by Customer. The quantity of Renewable Energy Credits identified in the RFP will not exceed 100% of Customer's anticipated demand for the year in which the Renewable Energy Credits will be produced. Nothing in this Agreement prohibits Customer from purchasing Renewable Energy Credits beyond those described herein.

5.2 Within three days after receiving responses to the request for proposals, NV Energy shall provide Customer with a pricing schedule for the Renewable Energy Credits.

5.3 Within three (3) Business Days after receiving the pricing schedule referred to in Section 5.2 above, Customer will direct NV Energy in writing to proceed with the acquisition of a specific amount of portfolio credits identified by Customer for each year (2015, 2016 and 2017). If Customer elects not to purchase the Portfolio Energy Credits at the price identified by NV Energy, Customer shall so notify NV Energy within the three (3) Business Day period and NV Energy will have no further obligation under this Section 5. If Customer fails to provide NV Energy with notice to proceed during the three (3) Business Day period, NV Energy shall not proceed with purchasing the Portfolio Energy Credits.

5.4 Customer agrees to pay the actual cost of the Renewable Energy Credits plus applicable transfer and registration fees through the Renewable Resource Rate for the Renewable Energy Credits commencing the first day of the month immediately following the date on which Customer gives NV Energy the direction to proceed with the purchase of the Renewable Energy Credits. The invoicing and paying of such invoice shall be handled consistent with Sections 4.3 and 4.4 of this Agreement. In the event the PUCN does not approve this Agreement, the Power Purchase Agreement or any other Transaction Documents in a manner that is reasonably acceptable to the Parties, Customer agrees to pay to NV Energy the actual costs and fees (i.e. WREGIS transfer and registration fees) NV Energy incurred to purchase, register and transfer the Renewable Energy Credits described in this Section 5. In such circumstances NV Energy shall invoice Customer the actual cost of the Renewable Energy Credits and any fees associated with acquiring the Renewable Energy Credits and transferring to or otherwise registering the Renewable Energy Credits for the benefit of Customer. The invoice shall reflect a credit for any payments Customer has already made utilizing the Renewable Resource Rate. Should the payments made by Customer under the Renewable Resource Rate on the date of the invoice exceed the

amount due, NV Energy will refund to Customer any overpayment made (to ensure Customer is only paying actual costs, plus applicable fees for the Renewable Energy Credits). Customer shall pay NV Energy within forty-five (45) days of receiving such invoice.

5.5 Customer may request that NV Energy issue a request for proposals for Renewable Energy Credits for 2018 and another for 2019 from market sources, current year production, in quantities to be identified by Customer. NV Energy, upon written notification from Customer will within 45 days of receiving such written notice from Customer, issue the request for proposals. Except as otherwise expressly provided in this Section 5.5, NV Energy and Customer shall following the same process described in Section 5.1 through 5.4 of this Agreement for such request for proposals. If Customer elects to purchase the Renewable Energy Credits from the request for proposals, Customer shall make a one-time payment to NV Energy for the actual cost of the Renewable Energy Credits acquired through the request for proposals, plus the actual fees for transferring the Renewable Energy Credits to Customer's account in WREGIS.

6. ANNUAL RPS CERTIFICATION

6.1 Upon PUCN approval of this Agreement, NV Energy will on an annual basis provide to Customer, for the Term, a certified attestation confirming the retirement of the specified number of WREGIS-qualified PCs retired on behalf of Customer in connection with NV Energy meeting its portfolio energy requirements as provided under Nevada law. With respect to Customer, such credits will be from a resource delivered to NV Energy in the then current year.

7. ASSIGNMENT. Neither Party shall assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the other Party (which consent shall not be unreasonably withheld, delayed or conditioned), and any attempted assignment of this Agreement without such consent shall be null and void; provided, however, that upon prior written notice to the other Party either Party may assign this Agreement to a Permitted Transferee without such consent, provided that the assigning Party is not released from its obligations under this Agreement as a result of such assignment and remains directly liable for such obligations.

8. LEGAL TERMINATION.

8.1 The Parties recognize that Customer may pursue alternative solutions to obtaining renewable generation or bundled retail electric service. If Customer elects to depart NV Energy's system or purchase energy from another source or in another manner, as provided by Nevada or Federal law as existing today or as subsequently modified, Customer may terminate this Agreement upon twelve (12) months' prior written notice to NV Energy, without further liability under the Agreement, except as provided in Section 8.2 (the "Legal Termination"). The termination notice for Legal Termination will identify the date of termination, but in no circumstances will be less than 12 months from the date the notice is provided.

8.2 In the event Customer elects to terminate this Agreement as provided in Section 8.1, NV Energy shall determine if Customer has fully paid under the Renewable Resource Rate for the Renewable Energy Credits NV Energy purchased for Customer pursuant to Section 5 of this Agreement. In the event Customer has not fully compensated NV Energy for the Renewable Energy Credits purchased pursuant to Section 5 Customer shall, prior to the date of termination pay NV Energy the

actual cost of purchasing the Renewable Energy Credits, plus the actual cost of transferring such Renewable Energy Credits to the Customer's account with WREGIS and NV Energy will transfer the Renewable Energy Credits to Customer.

8.3 In the event the Solar Arrays experience a Shortfall for a Measurement Period for both Summer Months and Non-Summer Months and NV Energy is unable to deliver Portfolio Energy Credits to Customer sufficient to cover Customer's then existing load for the Data Centers, Customer may terminate this Agreement with 60 days prior notice. If this Agreement is terminated by Customer pursuant to this Section 8.3 neither Party shall have any further obligation under this Agreement and neither Party shall be liable for any damages to the other Party for the termination pursuant to this Section 8.3. Nothing in this Section 8.3 modifies any other rights or obligations the parties may have under this Agreement for any breach that may otherwise occur under this Agreement. In the event of a termination pursuant to this Section 8.3, Customer shall pay NV Energy for the actual costs and fees NV Energy (i.e. WREGIS registration and transfer fees) incurs in connection with acquiring Renewable Energy Credits pursuant to Section 5 of this Agreement. Capitalized terms in this Section 8.3 that are not otherwise defined in this Agreement, shall have the meaning attributed to such term in the Power Purchase Agreement.

9. FORCE MAJEURE.

9.1 In the event that either Party is delayed in or prevented from performing or carrying out its obligations under this Agreement by reason of any cause beyond the reasonable control of, and without the fault or negligence of, such Party (an event of "Force Majeure"), such circumstance shall not constitute an event of default, and such Party shall be excused from performance hereunder and shall not be liable to the other Party for or on account of any loss, damage, injury, or expense resulting from, or arising out of, such delay or prevention; provided, however, that the Party encountering such delay or prevention shall use commercially reasonable efforts to remove the causes thereof (with failure to use such efforts constituting an Event of Default hereunder). If the Force Majeure event lasts longer than 90 days, either Party may terminate this Agreement upon notice to the other Party. Such notice will specify the date of termination.

9.2 As used herein, the term "Force Majeure" shall include, without limitation, (i) sabotage, riots or civil disturbances, (ii) acts of God, (iii) acts of the public enemy, (iv) terrorist acts affecting the Data Centers or the Solar Arrays, (v) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence, (vi) any action by any Governmental Entity which prevents or prohibits the Parties from carrying out their respective obligations under this Agreement, including, without limitation, an unstayed order of a court or administrative agency having the effect of cancellation or amendment of the NGR Tariff, or other change in law that results in a material adverse economic impact on NV Energy or otherwise prohibits either Party from performing its obligations hereunder, (vii) strike, labor disruption or disruption to transportation systems. Economic hardship of either Party shall not constitute a Force Majeure event under this Agreement.

10. **NOTICES.**

10.1 **Method of Delivery; Contacts.** Except for the monthly invoice under Section 4.3, each notice, consent, request, or other communication required or permitted under this Agreement must be in writing, delivered personally or sent by certified mail (postage prepaid, return receipt requested), by email (with electronic confirmation of receipt), or by a recognized international courier or overnight delivery service provider, and addressed to a Party as follows:

Customer:

Office of General Counsel
Sam Castor
7135 S. Decatur Blvd.
Las Vegas NV, 89118
Attention: Sam Castor
Email: sam@supernap.com

With a copy to:

Email: regulatory@supernap.com

NV Energy:

NV Energy
6226 W. Sahara Ave., M/S 13
Las Vegas, NV 89146
Attention: Vice President, Energy Supply

With a copy to:

NV Energy
6226 W. Sahara Ave., M/S 2
Las Vegas, NV 89146
Attention: General Counsel
Facsimile No.: 702-402-5300

10.2 **Receipt of Notice; Change of Information.** Each notice, consent, request, or other communication is deemed to have been received by the Party to whom it was addressed (a) when delivered if delivered personally; (b) on the third (3rd) Business Day after the date of mailing if mailed by certified mail; (c) on the date officially recorded as delivered according to the record of delivery if delivered by courier or overnight delivery; or (e) on the first Business Day after the email transmission if delivered by email and a copy of the notice is deposited in the U.S. Mail. Each Party may change its contact information for purposes of the Agreement by giving written notice to the other Party in the manner set forth above.

11. **CONDITIONS TO EFFECTIVENESS.** This Agreement shall not be binding on the Parties unless and until:

11.1 NV Energy shall have received the approval by the PUCN of this Agreement, the Power Purchase Agreement, any other Transaction Documents and the transactions contemplated hereby and thereby, without conditions, modifications or terms that are unacceptable to the Parties in their individual reasonable discretion, and which approval is not the subject of (a) a petition for reconsideration or rehearing, (b) a petition for judicial review, or (c) a petition for a preliminary injunction.

11.1.1 The Parties may elect to perform under Section 5 of this Agreement prior to obtaining approval of the NGR Agreement and Power Purchase Agreement from the PUCN. In the event the Parties mutually agree to perform Section 5 prior to obtaining PUCN approval, the Parties agree to be bound by the provisions of Section 5 and other applicable sections of this Agreement.

12. **DEFAULT; REMEDIES.**

12.1 With respect to a Party, there shall be an "Event of Default" if:

12.1.1 such Party fails to pay any amount due pursuant to this Agreement within the period specified in the Nevada Power Tariff or within thirty (30) days after such amount is due when no other period is specified in the Nevada Power Tariff, provided Nevada Power shall provide written notice of such non-payment to Customer and Customer shall have ten (10) days to cure such non-payment;

12.1.2 such Party is in breach of any representation or warranty set forth herein or fails to perform any material obligation set forth in this Agreement and such breach or failure is not cured within sixty (60) days after notice of the default is provided to the defaulting party from the non-defaulting Party; provided, however, that the cure period shall be extended by an additional 30 days if the defaulting party is unable to cure within the 60 days, but is pursuing a cure with reasonable diligence. Further, the period for curing a default under this Section 9.1.2 shall be extended by the number of days during which the defaulting Party is prevented from taking curative action as result of Force Majeure if the defaulting Party had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action;

12.1.3 such Party admits in writing its inability to pay its debts generally as they become due;

12.1.4 such Party files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof;

12.1.5 such Party makes an assignment for the benefit of creditors;

12.1.6 such Party consents to the appointment of a receiver of the whole or any substantial part of its assets;

12.1.7 such Party has a petition in bankruptcy filed against it, and such petition is not dismissed within 90 days after the filing thereof;

12.1.8 a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of such Party's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

12.1.9 under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of such Party's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

12.2 **Termination.** Upon the occurrence of an Event of Default, the non-defaulting Party shall provide notice of the default to the defaulting Party and shall specify in such notice the basis for the Event of Default. The defaulting Party shall have five days from the date of the notice of default to cure the default, unless another period to cure is specified in this Agreement. If the default is not cured within the five day period, the non-defaulting Party may provide notice to the defaulting Party that the Agreement has terminated. The termination shall be effective upon transmittal of the notice by any means specified in this Agreement to the defaulting Party. The defaulting Party shall remain liable for any obligations that Party had pursuant to the Agreement prior to the date of termination, in addition to any other surviving obligations specified herein or remedies available pursuant to Section 11.3.

12.3 **Remedies.** Subject to Sections 12.1, 12.2 and 12.4, upon an Event of Default by a Party, the other Party shall have, in addition to any other remedies available to such Party at law or in equity, the right, but not the obligation, to terminate or suspend this Agreement with respect to all obligations arising after the effective date of such termination or suspension (other than payment obligations relating to obligations arising prior to such termination or suspension).

12.4 **Damages.** In the event this Agreement is terminated by NV Energy due to Customer's default prior to the end of the Term, Customer shall be liable for damages equal to the Renewable Resource Rate, plus applicable fees and costs associated with the transfer of the Portfolio Energy Credits, that would have been charged to the Customer from the date of termination to the end of the Term, but in no circumstances shall the damages period exceed three years. NV Energy will transfer to Customer, consistent with the terms of this Agreement, those Portfolio Energy Credits for which Customer pays the Renewable Resource Rate. NV Energy shall use reasonable efforts to mitigate damages by marketing the Portfolio Energy Credits that would have been transferred to Customer to another person or persons. In the event NV Energy is able to market the Portfolio Energy Credits that would have been transferred to customer to another person or persons, the damages due from Customer will be likewise reduced. This Section 12.4 is intended to be the exclusive damages available to NV Energy in the event of termination due to default of this Agreement by Customer. This right does not apply in the event of Termination Under Legal Right, as discussed in Section 8. The exclusive damages available to Customer shall not exceed the Renewable Resource Rate (on a kWh basis) applicable to undeliverable Portfolio Energy Credits NV Energy is obligated to provide Customer under this Agreement. In no circumstances shall the damages available to Customer exceed a three year period. Each party shall use reasonable efforts to mitigate damages.

13. MISCELLANEOUS PROVISIONS.

13.1 Limitation of Liability. Notwithstanding anything to the contrary contained in this Agreement, neither Party shall be liable to the other Party or a third party for any consequential, indirect, exemplary, expectation or incidental damages, including but not limited to damages based on lost revenues or profits. This Section shall survive the expiration or earlier termination of, or any default or excuse of performance under, this Agreement.

13.2 Taxes, Fees or Charges from Governmental Entities. Customer is responsible for any Taxes, fees or charges including but not limited to those from Governmental Entities imposed on or associated with the Portfolio Energy Credits or their transfer to the Customer. 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, fee or charges including but not limited to those from Governmental Entities. NV Energy shall be entitled to all tax benefits associated with and resulting from the ownership, development and installation of the Solar Arrays or any production therefrom.

13.3 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any fines, fees, charges, assessments or liens on or with respect to the Solar Arrays. Customer shall also promptly pay any Taxes, charges, or fees of whatever type of any relevant Governmental Entity for which Customer is responsible applicable to the Solar Arrays before a fine or penalty is assessed or a lien attaches to the Solar Arrays. Customer shall notify NV Energy of any such fines, fees, charges, assessments or liens which may attach to or affect the Solar Arrays. If Customer breaches its obligations hereunder and a lien attaches or affects the Solar Arrays, it shall immediately notify NV Energy in writing, and shall promptly cause such fine, fee, charge, assessment or lien on the Solar Arrays to be paid or discharged and released of record, and shall indemnify NV Energy against all costs and expenses, including reasonable attorneys' fees and court costs at trial or appeal, incurred by NV Energy or others, in discharging and releasing such lien.

13.4 No Waiver. The failure of either Party to enforce any of the provisions of this Agreement at any time, or to require performance by either Party of any of the provisions of this Agreement at any time, will not be a waiver of any provisions, nor in any way affect the validity of the Agreement, or either Party's right to enforce each and every provision hereof.

13.5 Remedies. All rights and remedies of either Party provided for in this Agreement are cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, or otherwise, except as discussed in Section 12.4 and 13.1.

13.6 Governing Law: Venue. This Agreement is governed by and must be construed in accordance with the laws of the State of Nevada, without giving effect to its conflict of law provisions. Nothing in this agreement is designed to eliminate the PUCN's jurisdiction over matters within its jurisdiction. In the event a court of competent jurisdiction has jurisdiction over a civil action or remedy brought under this Agreement, the Parties agree that they will first seek to initiate such action in the federal district court of Nevada with jurisdiction over Clark County, Nevada. In the event the federal district court lacks jurisdiction over such a dispute, the parties agree the dispute will be brought in the

Nevada state district court for Clark County, Nevada in Las Vegas, Nevada. Both Parties agree that they will not initiate an Action against the other Party in any other jurisdiction.

13.7 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 jury trial cannot be or has not been waived.

13.8 Integration. This Agreement represents the entire and integrated agreement between NV Energy and Customer and supersedes all prior and contemporaneous oral and written communications, representations, and agreements relating to the subject matter of the Transaction, except as otherwise expressly stated herein.

13.9 Amendments. Any change, modification, or amendment to this Agreement is not enforceable unless consented to in writing by the Parties and executed with the same formality as this Agreement.

13.10 Severability. If any portion or provision of this Agreement is invalid, illegal, or unenforceable, or any event occurs that renders any portion or provision of the Agreement void, the other portions or provisions of this Agreement will remain valid and enforceable. Any void portion or provision will be deemed severed from this Agreement, and the balance of this Agreement will be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken portion or provision with a valid provision that comes as close as possible to the intent of the stricken portion or provision.

13.11 No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this Agreement any third-party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

13.12 Headings; Exhibits; Cross References. The headings or section titles contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner in the construction of this Agreement. All exhibits and schedules attached to this Agreement are incorporated into this Agreement by reference. All references in this Agreement to Sections, Subsections, Exhibits, and Schedules are to Sections, Subsections, Exhibits, and Schedules of or to this Agreement, unless otherwise specified. And, unless the context otherwise requires, the singular includes the plural and the plural includes the singular and the neuter includes feminine and masculine.

13.13 Performance of Acts on Business Days. Any reference in this Agreement to time of day refers to local time in Clark County, Nevada. All references to days in this Agreement refer to calendar days, unless stated otherwise. If the final date for payment of any amount or performance of any act required by this Agreement falls on a day other than a Business Day, that payment is required to be made or act is required to be performed on the next Business Day.

13.14 Business Formation. Nothing in this Agreement creates a partnership, joint venture or other similar business construct between the Parties.

13.15 Survivability. NV Energy and Customer acknowledge and agree that each will perform their obligations under Section 5 of the Agreement upon written confirmation from Customer that NV Energy should proceed with the transaction contemplated in Section 5. Neither party may argue that failure of the PUCN at a later date to approve this Agreement, the Power Purchase Agreement or other Transaction Documents releases that Party from its performance obligations under Section 5. The provisions of Sections 1, 4, 6, 7 through 13 survive the termination of this Agreement.

13.16 Representations and Warranties.

13.16.1 Customer's Standing in Nevada. Customer represents that, as of the date of this Agreement, it (1) is duly organized, validly existing and in good standing under the laws of the State of Nevada, (2) is licensed to do business in the State of Nevada, and (3) has the requisite entity power and authority to carry on its business as now being conducted.


13.16.2 Authority; Enforceability. Each Party has the full entity power and authority to execute and deliver this Agreement and the other Transaction Documents to which it will be a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each Party of this Agreement and the other Transaction Documents to which it will be a party in connection with the transactions contemplated hereby, and the performance by such Party of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary entity action, and assuming due and valid authorization, execution and delivery thereof by the other Party, will be when delivered valid and binding obligations of such Party enforceable against such Party in accordance with their terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity).

13.16.3 No Pending Actions, Suits or Proceedings. Customer represents that, to its knowledge as of the date of this Agreement, there are no Actions, suits or proceedings pending or threatened against Customer in any court or before any administrative agency that would prevent its performance under this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties as of the Effective Date.

**NEVADA POWER d/b/a NV ENERGY,
a Nevada corporation**

By: 
Name: DAVID CANON
Title: PRESIDENT CEO

Switch, Ltd.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties as of the Effective Date.

**NEVADA POWER d/b/a NV ENERGY,
a Nevada corporation**

By: _____
Name: _____
Title: _____

Switch, Ltd.

By: _____
Name: ROB RAY
Title: CEO


Legal: _____ Date: _____

EXHIBIT A
Customer Accounts

3000225710922980428	2298042	LGS-1 LARGE GENERAL SERVICE	7385 LINDELL RD UNIT S17H	LAS VEGAS, NV 89118
3000225710922928373	2292837	LGS-1 LARGE GENERAL SERVICE	7385 LINDELL RD UNIT S15	LAS VEGAS, NV 89118
3000225710922825466	2282546	LGS-1 LARGE GENERAL SERVICE	7385 LINDELL RD TP TPS15H	LAS VEGAS, NV 89118
3000225710922847124	2284712	LGS-2-PRI LARGE GENERAL SERVICE	7135 S DECATUR BLVD. UNIT S7	LAS VEGAS, NV 89118
3000225710921922555	2192255	GENERAL SERVICE	7135 S DECATUR BLVD STE T	LAS VEGAS, NV 89118
3000225710922716162	2271616	LGS-3-PRI LARGE GENERAL SERVICE	7135 S DECATUR BLVD STE S3	LAS VEGAS, NV 89118
3000225710922395181	2239518	LGS-3-PRI LARGE GENERAL SERVICE	7135 S DECATUR BLVD STE S2	LAS VEGAS, NV 89118
3000225710921938993	2193899	LGS-3-PRI LARGE GENERAL SERVICE	7135 S DECATUR BLVD STE S1	LAS VEGAS, NV 89118
3000225710922615554	2261555	LGS-3-PRI LARGE GENERAL SERVICE	7135 S DECATUR BLVD STE S 8	LAS VEGAS, NV 89118
3000225710921922563	2192256	GENERAL SERVICE	7135 S DECATUR BLVD STE Q5-10	LAS VEGAS, NV 89118
3000225710921969128	2195912	LGS-1 LARGE GENERAL SERVICE	7135 S DECATUR BLVD HS HS02	LAS VEGAS, NV 89118
3000225710921853180	2185318	LGS-1 LARGE GENERAL SERVICE	7135 S DECATUR BLVD HS HS01	LAS VEGAS, NV 89118
3000225710922537436	2253743	LGS-3-PRI LARGE GENERAL SERVICE	7135 S DECATUR BLVD BLDG DF6	LAS VEGAS, NV 89118
3000225710922481940	2248194	LGS-3-PRI LARGE GENERAL SERVICE	7135 S DECATUR BLVD BLDG 5	LAS VEGAS, NV 89118
3000225710919189142	1918914	LGS-1 LARGE GENERAL SERVICE	7050 LINDELL RD UNIT F2B	LAS VEGAS, NV 89139
3000225710921597340	2159734	GENERAL SERVICE	6795 EDMOND ST STE LP3F	LAS VEGAS, NV 89118
3000225710921597357	2159735	GENERAL SERVICE	6795 EDMOND ST STE LP1G	LAS VEGAS, NV 89118
3000225710921597290	2159729	LGS-1 LARGE GENERAL SERVICE	6795 EDMOND ST STE LM4A	LAS VEGAS, NV 89118
3000225710921597308	2159730	LGS-1 LARGE GENERAL SERVICE	6795 EDMOND ST STE LM3B	LAS VEGAS, NV 89118
3000225710921597316	2159731	LGS-1 LARGE GENERAL SERVICE	6795 EDMOND ST STE LM2C	LAS VEGAS, NV 89118
3000225710921597324	2159732	LGS-1 LARGE GENERAL SERVICE	6795 EDMOND ST STE LM1D	LAS VEGAS, NV 89118
3000225710921597332	2159733	LGS-1 LARGE GENERAL SERVICE	6795 EDMOND ST STE LL1E	LAS VEGAS, NV 89118
3000225710921711776	2171177	LGS-1 LARGE GENERAL SERVICE	6795 EDMOND ST STE 220	LAS VEGAS, NV 89118
3000225710922587290	2258729	GENERAL SERVICE	6795 EDMOND ST STE 215	LAS VEGAS, NV 89118
3000225710921451828	2145182	LGS-1 LARGE GENERAL SERVICE	6795 EDMOND ST STE 180G	LAS VEGAS, NV 89118
3000225710921451811	2145181	LGS-1 LARGE GENERAL SERVICE	6795 EDMOND ST STE 180F	LAS VEGAS, NV 89118
3000225710921451803	2145180	GENERAL SERVICE	6795 EDMOND ST STE 180E	LAS VEGAS, NV 89118
3000225710921451795	2145179	GENERAL SERVICE	6795 EDMOND ST STE 180D	LAS VEGAS, NV 89118
3000225710921451787	2145178	GENERAL SERVICE	6795 EDMOND ST STE 180C	LAS VEGAS, NV 89118
3000225710921451779	2145177	GENERAL SERVICE	6795 EDMOND ST STE 180B	LAS VEGAS, NV 89118
3000225710921451761	2145176	GENERAL SERVICE	6795 EDMOND ST STE 180A	LAS VEGAS, NV 89118
3000225710921591038	2159103	LGS-1 LARGE GENERAL SERVICE	6795 EDMOND ST STE 110B	LAS VEGAS, NV 89118

3000225710921408877	2140887	LGS-1 LARGE GENERAL SERVICE	6785 EDMOND ST G C100	LAS VEGAS, NV 89118
3000225710920399052	2039905	LGS-1 LARGE GENERAL SERVICE	5655 BADURA AVE HS B	LAS VEGAS, NV 89118
3000225710920447653	2044765	LGS-1 LARGE GENERAL SERVICE	5605 BADURA AVE UNIT 180A	LAS VEGAS, NV 89118
3000225710920407525	2040752	LGS-1 LARGE GENERAL SERVICE	5605 BADURA AVE UNIT 180	LAS VEGAS, NV 89118
3000225710922875780	2287578	LGS-3-PRI LARGE GENERAL SERVICE	5225 W CAPOVILLA AVE UNIT S13	LAS VEGAS, NV 89118
3000225710922739396	2273939	LGS-3-PRI LARGE GENERAL SERVICE	5225 W CAPOVILLA AVE UNIT S12	LAS VEGAS, NV 89118
3000225710922651120	2265112	LGS-3-PRI LARGE GENERAL SERVICE	5225 W CAPOVILLA AVE UNIT S1	LAS VEGAS, NV 89118
3000225710922944608	2294460	LGS-3-PRI LARGE GENERAL SERVICE	5225 W CAPOVILLA AVE UNIT S 14	LAS VEGAS, NV 89118
3000225710922628870	2282887	LGS-1 LARGE GENERAL SERVICE	5225 W CAPOVILLA AVE TP TP2	LAS VEGAS, NV 89118
3000225710922689999	2258999	LGS-1 LARGE GENERAL SERVICE	5225 W CAPOVILLA AVE TP TP1	LAS VEGAS, NV 89118
3000225710922778204	2277820	STREET LIGHT	5216 W CAPOVILLA AVE SL SL	LAS VEGAS, NV 89118
3000225710921525416	2152541	LGS-3-SEC LARGE GENERAL SERVICE	4495 E SAHARA AVE STE B	LAS VEGAS, NV 89121
3000225710920881416	2086141	LGS-1-PREPROC LARGE GENERAL SERVICE	4495 E SAHARA AVE STE A	LAS VEGAS, NV 89121
3600225710918168238	1816823	SERVICE	4489 E SAHARA AVE	LAS VEGAS, NV 89104
3000225710921855417	2185541	LGS-3-SEC LARGE GENERAL SERVICE	4475 E SAHARA AVE UNIT B	LAS VEGAS, NV 89121
3000225710921852853	2185285	LGS-3-SEC LARGE GENERAL SERVICE	4475 E SAHARA AVE UNIT A	LAS VEGAS, NV 89121
3000225710917676413	1767641	LGS-2-SEC LARGE GENERAL SERVICE	2475 ARDEN ST	LAS VEGAS, NV 89104

Schedule 1.20

Renewable Resource Rate

If RFP PCs are blended into the Renewable Resource Rate the price for the PCs shall be [Insert blended rate, to be established based on completion of Short Term RFP described in section 5].

If RFP PCs are not included in the Renewable Resource Rate the Renewable Resource Rate shall be \$3.51 per megawatt hour.

Attachment A

[NVE Letter Head]

[Date]

To Whom It May Concern,

In an effort to ensure Switch has a path to 100% green generation in Nevada, Switch and NV Energy have negotiated a Green Rider tariff agreement ("Agreement") that allows Switch to obtain portfolio energy credits to cover 100% of Switch's energy load, via the facilitation of a 100 Megawatt, large scale solar generation facility to be name "Switch Station."

NV Energy and Switch have developed the Agreement to provide a solution for Switch that allows Switch to achieve the 100% percent green energy goal set by Switch. Similar to the Apple, Inc. transaction previously approved by the Public Utilities Commission of Nevada in Docket No. 13-07005, the renewable energy facility from which Switch will purchase renewable energy credits is a new renewable energy system within the meaning of Nevada law delivering emission-free energy consumed in Nevada. As such, Nevada Power anticipates that the Switch Station solar facility utilized by Switch will deliver the same green energy benefits to Nevada as the renewable energy facility utilized by Apple, Inc., as approved by the Public Utilities Commission of Nevada in Docket No. 13-07005.

Switch will be the first Nevada Power commercial customer to go 100% green utilizing the Green Rider tariff in Las Vegas. We are delighted by Switch's initiative to pursue and support renewable generation and applaud Switch's trailblazing efforts in this regard. Switch and NV Energy will continue to work on renewable solutions to ensure that Switch is able to adopt the cleanest and most energy efficient energy solutions.

**Paul Caudill
Chief Executive Officer
NV Energy**

ATTACHMENT 3

PPA

EXECUTION VERSION

**LONG-TERM RENEWABLE
POWER PURCHASE AGREEMENT**

BETWEEN

NEVADA POWER COMPANY

AND

PLAYA SOLAR 2, LLC

June 19, 2015

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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 June 19, 2015 (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 **PLAYA SOLAR 2, LLC**, a Delaware limited liability company (“Supplier”). Buyer and Supplier are referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, Buyer is an operating electric public utility, subject to the applicable rules and regulations of the PUCN and FERC;

WHEREAS, Supplier desires to sell to Buyer, and Buyer desires to purchase from Supplier, Product from the Generating Facility upon the terms and conditions set forth herein.

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

1. DEFINITIONS

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

- 1.1 “AAA” is defined in Section 6.3.2.
- 1.2 “Accepted Compliance Costs” is defined in Section 3.5.
- 1.3 “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.
- 1.4 “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.
- 1.5 “Affiliate” means, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer, Affiliate shall only include Berkshire Hathaway Energy Company and its direct and indirect, wholly owned subsidiaries.

- 1.6 **“Agreement”** means this Long-Term Renewable Power Purchase Agreement together with the Exhibits attached hereto, as amended from time to time.
- 1.7 **“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.
- 1.8 **“Annual Supply Amount”** means, with respect to each Contract Year, the sum of the twelve Monthly Supply Amounts for that Contract Year.
- 1.9 **“Availability Notice”** means a notice delivered by Supplier to Buyer pursuant to Article 14 notifying Buyer of the availability of the Generating Facility.
- 1.10 **“Average On-Peak Mead Index”** means the simple average of the Mead Index for the On-Peak hours of a Summer Month 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 Generating 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 entity given jurisdiction over a program involving transferability of Renewable Energy Benefits or any part thereof.
- 1.20 **“Capacity Rights”** means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Generating Facility or the Generating Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax Credits.
- 1.21 **“Certified Net Capacity Rating”** is defined in Section 8.3.2.2.
- 1.22 **“Commercial Operation”** means that the Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System, all of which shall be Supplier’s responsibility to receive or obtain, and which occurs when all of the requirements set forth in Section 8.3, Section 17.2 and Exhibits 6 and 7 (a) have occurred, and (b) remain simultaneously true and accurate as of the date and time Supplier gives Buyer notice that Commercial Operation has occurred.
- 1.23 **“Commercial Operation Date”** means the date on which Commercial Operation occurs.
- 1.24 **“Commercial Operation Deadline”** means the date specified in Exhibit 6 by which the Commercial Operation Date must occur.
- 1.25 **“Compliance Cost Cap”** is defined in Section 3.5.
- 1.26 **“Contract Representative”** of a Party means the individual designated by that Party in Exhibit 4 as responsible for ensuring effective communication, coordination and cooperation between the Parties. A Party may change its Contract Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 29.1.
- 1.27 **“Contract Year”** means each year during the Term beginning on January 1 and ending on December 31 of the calendar year following the Commercial Operation Date (or commencing on the Commercial Operation Date if the Commercial Operation Date is January 1).
- 1.28 **“Controlling Interest”** with respect to a Person, means 50% or more of outstanding ownership interest, or the power to vote such percentage of ownership interest.
- 1.29 **“Covered Facility”** is defined in Section 24.5.1.

- 1.30 **“Credit Rating”** of a Person means the credit rating then assigned by a Relevant Rating Agency to the long-term, senior, unsecured, non-credit-enhanced indebtedness of that Person.
- 1.31 **“Critical Project Milestone”** means a Project Milestone designated as a Critical Project Milestone on Exhibit 6.
- 1.32 **“Cure Period”** is defined in Section 24.3.
- 1.33 **“Curtailed Product”** is defined in Section 10.3.
- 1.34 **“Daily Delay Damages”** means an amount equal to (a) with respect to the first (1st) through and including the sixtieth (60th) day subsequent to the Commercial Operation Deadline, sixteen thousand, six hundred, sixty-six and 67/100 U.S. Dollars (\$16,666.67) per day; (b) with respect to the sixty-first (61st) through and including the one-hundred-twentieth (120th) day subsequent to the Commercial Operation Deadline, thirty-three thousand, three hundred, thirty three and 33/100 U.S. Dollars (\$33,333.33) per day; and (c) with respect to the one-hundred-twenty-first (121st) through and including the one-hundred-eightieth (180th) day subsequent to the Commercial Operation Deadline, fifty thousand and 00/100 U.S. Dollars (\$50,000.00) per day.
- 1.35 **“Daily On-Peak Supply Amount”** means, with respect to each day of a calendar month, the sum of the Supply Amounts for the hours ending 0500 through 2200 for that month.
- 1.36 **“Daily Supply Amount”** means, with respect to each day of a calendar month, the sum of the Supply Amounts for the hours ending 0100 through 2400 for that month.
- 1.37 **“Defaulting Party”** is defined in Section 24.1.
- 1.38 **“Deficit Damages”** is defined in Section 8.6.
- 1.39 **“Delivered Amount”** means, with respect to any Delivery Hour, the actual amount of Net Energy delivered by Supplier and accepted by Buyer at the Delivery Point during such Delivery Hour.
- 1.40 **“Delivered PCs”** means PCs that have been delivered by Supplier and awarded to Buyer pursuant to the terms of this Agreement, in accordance with the Portfolio Standard and which have been properly delivered and recorded to Buyer’s PC Account.
- 1.41 **“Delivery Hour”** means each hour.
- 1.42 **“Delivery Point”** means the point of interconnection with the Transmission System set forth in the IA and as shown in Exhibit 5.

- 1.43 **“Derating”** means a condition of the Generating Facility as a result of which it is unable to produce the Supply Amount during a Delivery Hour.
- 1.44 **“Development Security”** is defined in Section 17.1.
- 1.45 **“Dispute”** is defined in Section 21.1.
- 1.46 **“Effective Date”** is defined in the preamble of this Agreement.
- 1.47 **“Electric System Authority”** means each of NERC, WECC, WREGIS, Balancing Authority Area Operator, Market Operator, an RTO, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region.
- 1.48 **“Emergency”** means any circumstance or combination of circumstances or any condition of the Generating Facility, the Interconnection Facilities, the Transmission System, or the transmission system of other transmission operators, which is determined or reported by Buyer, the Transmission Provider or any Electric System Authority to be (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission system reliability of the transmission system of other electric utilities.
- 1.49 **“Energy”** means all energy that is generated by the Generating Facility.
- 1.50 **“Energy Imbalance Market”** means generation facilities electrically located within the Balancing Authority Area that are, from time to time, bid in to or otherwise subject to dispatch instructions issued or originating from the Market Operator.
- 1.51 **“Environmental Contamination”** means the introduction or presence of Hazardous Substances at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Project Site will not be available or usable for the purposes contemplated by this Agreement.
- 1.52 **“Environmental Law”** shall mean any federal, state, local or other law, common law, regulation, rule, ordinance, code, decree, judgment, binding directive, or judicial or administrative order relating to the protection, preservation or restoration of human health, the environment or natural resources, including any law relating to the releases or threatened releases of Hazardous Substances into any medium (including ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport and handling of Hazardous Substances.

- 1.53 **“EPC Contract”** means the turnkey engineering, procurement and construction contract for the Generating Facility.
- 1.54 **“Event of Default”** is defined in Section 24.1.
- 1.55 **“EWG”** means an “exempt wholesale generator” as defined in the Public Utility Holding Company Act of 2005 and in implementing regulations issued thereunder.
- 1.56 **“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 shall be excluded for purposes of determining Excess Energy.
- 1.57 **“Excess Product”** means the Product associated with Excess Energy.
- 1.58 **“Excused Product”** means, with respect to the calculation of a Shortfall or a PC Shortfall, a Product for which, subject to the terms of this Agreement, Supplier is excused from selling or delivering to Buyer, and for which Supplier shall not be liable for any damages, as a result of: (a) Force Majeure, (b) Buyer’s failure to accept Net Energy or PCs in breach of this Agreement, (c) Emergency (except for an Emergency with respect to the Generating Facility that is not otherwise a Force Majeure), (d) Planned Outage complying with this Agreement or (e) Curtailed Product. Excused Product will be calculated in accordance with Section 3.7.4.
- 1.59 **“Expected Net Capacity Rating”** means 100 MW AC, measured at the Delivery Point.
- 1.60 **“Fair Market Value”** means the price which a willing buyer would pay for the Generating Facility in an arm’s-length transaction to a willing seller under no compulsion to sell, as further described in Section 6.3.
- 1.61 **“FERC”** means the Federal Energy Regulatory Commission and any successor.
- 1.62 **“Final Purchase Option”** is defined in Section 6.2.1.
- 1.63 **“Final Purchase Option Confirmation Notice”** is defined in Section 6.2.2.
- 1.64 **“Financing”** means an arm’s-length transaction between Supplier and Supplier’s Lenders.
- 1.65 **“Force Majeure”** is defined in Article 20.2.

- 1.66 **“Generating Facility”** means Supplier’s generating power plant as described in Exhibit 1, located at the Project Site as identified in Exhibit 3A and 3B and including mechanical equipment, and associated facilities and equipment required to deliver Net Energy to the Delivery Point, including items as further described in Exhibits 1, 3A, 3B, 5 and 14 hereto, and as such generating power plant may be expanded or otherwise modified from time to time in accordance with the terms hereof.
- 1.67 **“Good Utility Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose conduct at issue is a member of any relevant organization and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Good Utility Practice shall include compliance with applicable Laws and regulations, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.
- 1.68 **“Governmental Authority”** means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations, and with respect to Supplier, specifically includes FERC, the PUCN, NERC, WECC and WREGIS.
- 1.69 **“Hazardous Substance”** means (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations, (b) any chemicals or other materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants” or words of similar import under any Environmental Law and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited or regulated as such under any Environmental Law, including the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., the Comprehensive Environmental Response

Compensation and Liability Act, 42 U.S.C. section 9601 et seq., or any similar state statute.

- 1.70 **“IA”** means the Large Generator Interconnection Agreement that has been or will be executed between Supplier and Transmission Provider, or its successors, for the Generating Facility.
- 1.71 **“IEEE-SA”** means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.
- 1.72 **“Indemnified Party”** is defined in Section 18.1.
- 1.73 **“Indemnifying Party”** is defined in Section 18.1.
- 1.74 **“Interconnection Facilities”** means the equipment and facilities, including any modifications, additions and upgrades made to such facilities, necessary to connect the Generating Facility to the Transmission System as described in Exhibit 5.
- 1.75 **“Invoice”** means the statements described in Section 7.2 setting forth the information required therein, as well as the associated payment due for the Billing Period or the Contract Year, in accordance with Exhibit 2A.
- 1.76 **“ITC”** means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.
- 1.77 **“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.
- 1.78 **“Loss”** means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Penalties, sanctions, Taxes, judgments, damages, losses or expenses imposed by a third party upon an Indemnified Party or incurred in connection with a claim by a third party against an Indemnified Party.
- 1.79 **“Licensed Professional Engineer”** means a person proposed by Supplier and acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made in Nevada, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Supplier and is not an employee of its members or Affiliates, other than with the prior written consent of Buyer, for services previously or currently being rendered to Supplier or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Generating

Facility, or of a manufacturer or supplier of any equipment installed in the Generating Facility.

- 1.80 **"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.
- 1.81 **"Material Adverse Effect"** means, with respect to a Party, a material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, operations or financial condition of such Party.
- 1.82 **"Maximum Amount"** means, with respect to a Delivery Hour, 100 MWh.
- 1.83 **"Mead Index"** means the Hourly Mead Index published by Powerdex.
- 1.84 **"Measurement Period"** means each two (2) consecutive Contract Years commencing with the first two Contract Years of the Term.
- 1.85 **"Meter"** means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters required for (a) accurate determination of the quantities of Delivered Amounts and Station Usage from the Generating Facility and for recording other related parameters required for the reporting of data to Supplier, (b) the computation of the payment due to Supplier from Buyer and (c) compliance with requirements of any Electric System Authority, any Governmental Authority or Transmission Provider. Meters do not include any check meters Supplier may elect to install as contemplated by Section 7.1.1, other than the gross meter installed to determine gross Energy (and Station Usage).
- 1.86 **"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.
- 1.87 **"Monthly Supply Amount"** means, with respect to a calendar month, the Daily Supply Amount for that month times the number of days in that month.
- 1.88 **"Monthly Off-Peak Supply Amount"** means, with respect to a calendar month, the Monthly Supply Amount less the Monthly On-Peak Supply Amount.
- 1.89 **"Monthly On-Peak Supply Amount"** means, with respect to a calendar month, the Daily On-Peak Supply Amount for such month times the number of days in that month, excluding Sundays and NERC holidays.
- 1.90 **"Moody's"** means Moody's Investor Services, Inc. and any successor.
- 1.91 **"MW"** means megawatts of electrical power.

- 1.92 **“MWh”** and **“MWhs”** mean a megawatt hour or megawatt hours of electrical energy.
- 1.93 **“NAC”** means the Nevada Administrative Code.
- 1.94 **“NERC”** means the North American Electric Reliability Corporation and any successor.
- 1.95 **“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.
- 1.96 **“Non-Defaulting Party”** means the Party other than the Defaulting Party.
- 1.97 **“Non-Summer Months”** means all months of the Stub Period or a Contract Year, not including the Summer Months.
- 1.98 **“Notice to Proceed”** means the initial notification by the Supplier to its EPC contractor to commence work under the EPC Contract.
- 1.99 **“NRS”** means the Nevada Revised Statutes.
- 1.100 **“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.
- 1.101 **“Off-Peak”** means hours ending 0100 through 0400 PPT and hours ending 2300 through 2400 PPT each day.
- 1.102 **“Off-Peak Period”** means all Off-Peak hours of the Stub Period or a Contract Year, as applicable.
- 1.103 **“On-Peak”** means hours ending 0500 through 2200 PPT each day.
- 1.104 **“Operating Representative”** of a Party means any of the individuals designated by that Party, as set forth in Exhibit 4, to transmit and receive routine operating and Emergency communications required under this Agreement. A Party may change any of its Operating Representatives by providing notice of the change to the other Party in accordance with the notice procedures set forth in Section 29.1 herein.
- 1.105 **“Operating Security”** is defined in Section 17.2.

- 1.106 **“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.
- 1.107 **“Output Right of First Offer”** is defined in Section 24.5.1.
- 1.108 **“Party”** or **“Parties”** means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.109 **“PC”** or **“Portfolio Energy Credit”** means a unit of credit which equals one kilowatt-hour of electricity generated, acquired or saved (or deemed so) by the Generating Facility, all as calculated by the PUCN operations staff and certified by the PC Administrator pursuant to the Renewable Energy Law (or by a successor Governmental Authority pursuant to a successor Law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada), and certified by WREGIS.
- 1.110 **“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.
- 1.111 **“PC Replacement Costs”** is defined in Section 3.8.1.
- 1.112 **“PC Shortfall”** has that meaning ascribed to that term in Section 3.8.1.
- 1.113 **“PC Shortfall Amount”** is defined in Section 3.8.1.
- 1.114 **“Penalties”** means any penalties, fines, damages, or sanctions attributable to Supplier’s failure to perform under this Agreement and actually imposed on Buyer pursuant to an order issued by any Governmental Authority, the Transmission Provider or any Electric System Authority.
- 1.115 **“Person”** or **“Persons”** means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.116 **“Planned Outage”** is defined in Article 11.1
- 1.117 **“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).

- 1.118 **“Power Quality Standards”** means the power quality standards established by NERC, WECC, Transmission Provider, 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.
- 1.119 **“Pacific Prevailing Time”** or **“PPT”** means Pacific Standard Time or Pacific Daylight Time, whichever is then prevailing in Las Vegas, Nevada.
- 1.120 **“Preliminary Interest Notice”** is defined in Section 6.2.1
- 1.121 **“Product”** means all (a) Net Energy, (b) PCs (and any equivalent rights in any other jurisdiction), (c) Renewable Energy Benefits and (d) Capacity Rights arising from or relating to the Generating Facility.
- 1.122 **“Product Rate”** means the applicable rate set forth in Exhibit 2A.
- 1.123 **“Project Milestone”** means each of the milestones listed in Exhibit 6.
- 1.124 **“Project Milestone Schedule”** means the schedule of Project Milestones, completion dates and required documentation specified in Exhibit 6.
- 1.125 **“Project Site”** means the site for the Generating Facility, as more particularly described in Exhibit 3A and depicted in Exhibit 3B.
- 1.126 **“PTC”** means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.
- 1.127 **“PUCN”** means the Public Utilities Commission of Nevada and any successor.
- 1.128 **“PUCN Approval”** is defined in Section 16.2.
- 1.129 **“PUCN Approval Date”** means the date the PUCN Approval becomes effective pursuant to NAC §703.790.
- 1.130 **“PUCN Approval Deadline”** means, with respect to any matter submitted to the PUCN for approval, the expiration of the time period provided for by Nevada Law during which the PUCN is required to either approve or specify inadequacies with respect to such matter.
- 1.131 **“QF”** or **“Qualifying Facility”** 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.

- 1.132 **“Qualified Financial Institution”** means a financial institution having an office in the United States, with a total tangible net worth of at least ten billion dollars (\$10,000,000,000) U.S. and whose Credit Rating is at least “A-” by S&P and “A3” by Moody’s.
- 1.133 **“Qualified Transferee”** means a Person that has a tangible net worth of at least thirty million dollars (\$30,000,000) and has, or has entered into a contract for operations and maintenance services with a third party for a minimum of five (5) years that has, at least three (3) years of experience operating a generating plant of similar technology and similar size to the Generating Facility.
- 1.134 **“Real Property Rights”** is defined in Section 8.10.
- 1.135 **“Relevant Rating Agency”** means Moody’s or S&P.
- 1.136 **“Renewable Energy Benefits”** means any and all renewable and environmental attributes, emissions, reductions, Portfolio Energy Credits (and any equivalent rights in any other jurisdictions), credits, offsets, allowances, reporting rights and benefits, howsoever entitled, and includes any and all those that are: (a) available, allocated, assigned, awarded, certified or otherwise transferred or granted to Supplier or Buyer by the PC Administrator or any Governmental Authority in any jurisdiction in connection with the Generating Facility or the generation, transmission or use of the Product, including but not limited to those related to the Clean Air amendments of 1970 and regulations of the Environmental Protection Agency thereunder; (b) associated with the production of Energy or based in whole or part on the Generating Facility’s use of renewable resources for generation or because the Generating Facility constitutes a renewable energy system or the like or because the Generating Facility does not produce or produces less greenhouse gasses, regulated emissions or other pollutants, whether any such credits, offsets, allowances or benefits exist now or in the future and whether they arise under existing Law or any future Law or whether such credit, offset, allowance or benefit or any Law, or the nature of such, is foreseeable or unforeseeable; (c) credits, offsets, allowances or benefits attributable to Energy generated and consumed by the Generating Facility, such as Station Usage (parasitic load); (d) claims, credits, benefits, emissions, reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or generation of the Product, and include but are not limited to: (1) any avoided emissions of pollutants into the air, soil, or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere and (e) the Renewable Energy Benefits Reporting Rights. Renewable Energy Benefits exclude and do not include (i) any Tax Credits or other Tax incentives existing now or in the future associated with the construction, ownership or operation of the Generating

Facility, (ii) matters designated by Buyer as sources of liability and (iii) adverse wildlife or environmental impacts.

- 1.137 **“Renewable Energy Benefits Reporting Rights”** means the exclusive right of a purchaser of Renewable Energy Benefits to report exclusive ownership of Renewable Energy Benefits in compliance with federal or state Law, if applicable, and to federal or state agencies or other Persons at such purchaser’s discretion, and include reporting under (1) Section 1605(b) of the Energy Policy Act of 1992, (2) the Environmental Protection Agency, (3) the Clean Air Act Amendments Section 111(d) and regulations thereunder and (4) any present or future domestic, international or foreign emissions trading program or renewable portfolio standard.
- 1.138 **“Renewable Energy Law”** means an act of the Nevada Legislature relating to energy that requires certain electric service providers to comply with the portfolio standard for renewable energy, and providing for other matters relating thereto, codified as NRS §§ 704.7801 through 704.7828, inclusive, and the rules and regulations of WREGIS, and the regulations, guidance and other requirements promulgated thereunder, in each case as such Laws, regulations, guidance and requirements may be amended, preempted or superseded.
- 1.139 **“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.
- 1.140 **“Replacement Costs”** is defined in Section 3.7.1.3 with respect to the On-Peak hours of Summer Months and Section 3.7.2.3 with respect to the On-Peak hours of Non-Summer Months.
- 1.141 **“Required Facility Documents”** means the permits and other authorizations, rights and agreements now or hereafter necessary for construction, operation, and maintenance of the Generating Facility set forth in Exhibit 12. Nothing set forth in Exhibit 12 limits Supplier’s obligation to obtain the permits set forth in Exhibit 12 or otherwise required hereunder or with respect to the Generating Facility.
- 1.142 **“Restricted Period”** is defined in Section 8.4.1.
- 1.143 **“Restricted Transaction”** is defined in Section 6.1.1.
- 1.144 **“ROFO Seller”** is defined in Section 6.1.1.
- 1.145 **“ROFO Transaction”** is defined in Section 6.1.1.
- 1.146 **“Seller ROFO Notice”** is defined in Section 6.1.1.
- 1.147 **“Shortfall”** is defined in Section 3.7.1.1 with respect to the On-Peak hours of Summer Months and Section 3.7.2.1 with respect to the On-Peak hours of Non-Summer Months.

- 1.148 **“Shortfall Amount”** is defined in Section 3.7.1.2 for the On-Peak hours of Summer Months and Section 3.7.2.2 for the On-Peak hours of Non-Summer Months.
- 1.149 **“Standard and Poor’s”** or **“S&P”** means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc. and any successor.
- 1.150 **“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.
- 1.151 **“Station Usage”** means all Energy used by the Generating Facility.
- 1.152 **“Stub Period”** means the period of time commencing on the Commercial Operation Date and ending on December 31 of the calendar year in which the Commercial Operation Date occurs (provided, however, that if the Commercial Operation Date occurs on January 1, then the term “Stub Period” will have no application to this Agreement).
- 1.153 **“Stub Period Supply Amount”** means the sum of the Daily Supply Amount for each day of the Stub Period.
- 1.154 **“Summer Months”** means the months of June, July, August and September occurring during the Stub Period or a Contract Year.
- 1.155 **“Supplier”** is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.156 **“Supplier’s Lenders”** means any Person, other than an Affiliate of Supplier, and its permitted successors and assigns, providing money or credit in connection with any development, bridge, construction, takeout, permanent debt or tax equity financing or refinancing for the Generating Facility, including without limitation lease, sale leaseback, monetization of tax benefits, backleverage financing, or credit derivative arrangements.
- 1.157 **“Supplier’s Required Regulatory Approvals”** means the approvals, consents, authorizations or permits of, or filings with or notifications to, the Governmental Authorities listed on Exhibit 10.
- 1.158 **“Supply Amount”** means, with respect to any Delivery Hour, the amount of Energy stated in Exhibit 13.
- 1.159 **“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.

- 1.160 "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.
- 1.161 "Term" is defined in Section 2.2.
- 1.162 "Test Product Rate" is defined in Section 4.1.1.
- 1.163 "Transmission Provider" means Nevada Power Company or any successor operator or owner of the Transmission System.
- 1.164 "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, except the Interconnection Facilities.
- 1.165 "UEPA" means the Utility Environmental Protection Act, as set forth in NRS §§ 704.820 through 704.900 and the PUCN regulations promulgated thereunder at NAC §§ 703.415 through 703.427.
- 1.166 "Weather Meter" is defined in Section 7.1.8.
- 1.167 "WECC" means the Western Electric Coordinating Council (formerly Western System Coordinating Council) and any successor.
- 1.168 "WREGIS" means the Western Renewable Energy Generation Information System and any successor.
- 1.169 "Yearly PC Amount" means the amount of PCs for a Contract Year as stated in Exhibit 18.

2. TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

- 2.1 Effective Date. This Agreement shall become effective on the Effective Date.
- 2.2 Term. Supplier's obligation to deliver Product, and Buyer's obligation to accept and pay for Product, shall commence on the Operation Date and shall continue for a period of twenty (20) Contract Years following the Commercial Operation Date, subject to earlier termination of this Agreement pursuant to the terms hereof (the "Term"); provided, however, that Buyer's obligations to pay for or accept any

Product are conditioned on the receipt of the PUCN Approval. Buyer shall not be obligated to accept or pay for any Product, unless the PUCN Approval is received or Buyer waives its right to terminate this Agreement pursuant to Section 16.3.

2.3 Termination.

2.3.1 For Cause. This Agreement may be terminated at any time by the Non-Defaulting Party upon two (2) Business Days' prior notice to the Defaulting Party if an Event of Default has occurred and is continuing after the applicable Cure Period (if any) in Section 24.3 has expired; provided, however, that any purported termination by Supplier shall first require that Supplier deliver Notice to Buyer stating prominently therein in type font no smaller than 14 point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER A RENEWABLE RESOURCE PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions. Supplier will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within the 15 Business Days after receipt of such notice.

2.3.2 Termination by Buyer. This Agreement may be terminated by Buyer without payment or penalty in accordance with Article 16 in the event the PUCN Approval is not obtained by the PUCN Approval Deadline, or is granted with conditions that are not acceptable to Buyer in its sole discretion.

2.3.3 Termination by Supplier. This Agreement may be terminated by Supplier without payment or penalty if (a) the PUCN has not granted PUCN Approval as of January 31, 2016, or (b) the period for filing an administrative or judicial appeal of the PUCN order providing the PUCN Approval has not expired without the filing of such an appeal as of January 31, 2016; in either case, such termination must be exercised by Supplier by giving written notice delivered to Buyer no later than February 10, 2016.

2.3.4 Force Majeure. This Agreement may be terminated by Buyer if Supplier's obligations hereunder have been excused by the occurrence of an event of Force Majeure pursuant to Article 20 for longer than twelve (12) consecutive months or three hundred sixty (360) days in any five hundred forty (540) day period.

2.4 Effect of Termination - Survival of Obligations. Any termination of this Agreement or expiration of the Term shall not release either Party from any applicable provisions of this Agreement with respect to:

2.4.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination or breach of this Agreement;

- 2.4.2 Indemnity obligations contained in Article 18, which shall survive to the full extent of the statute of limitations period applicable to any third-party claim;
- 2.4.3 Limitation of liability provisions contained in Article 19;
- 2.4.4 For a period of two (2) years after the termination date, the right to submit a payment Dispute pursuant to Article 21; or
- 2.4.5 The resolution of any Dispute submitted pursuant to Article 21 prior to, or resulting from, termination.

3. SUPPLY SERVICE OBLIGATIONS

- 3.1 **Dedication.** One hundred percent (100%) of the Product from the Generating Facility shall be dedicated exclusively to Buyer for so long as this Agreement is in force and effect. Supplier shall not (a) sell, divert, grant, transfer or assign Product to any Person other than Buyer, (b) provide Buyer with electric Net Energy, PCs, Renewable Energy Benefits or Capacity Rights from any source other than the Generating Facility or (c) divert, redirect or make available the Generating Facility or any resource therefrom to another generating facility or any third party. The Parties agree that remedies at Law may be inadequate in the event of a breach of this Section 3.1, and the Supplier agrees that Buyer shall be entitled to seek without proof of actual damages, temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining the Supplier from committing or continuing any breach of this Section 3.1.
- 3.2 **Purchase and Sale.** For and in consideration of Buyer's payment for the Product, Supplier sells to Buyer, and Buyer accepts from Supplier, any right, title and interest that Supplier may have in and to the Product, including Capacity Rights and Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term.
- 3.3 **No Double Sales.** Supplier represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person, the Capacity Rights, if any. During the Term, Supplier shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than Buyer. Buyer may report to any person that it exclusively owns the Capacity Rights. At Buyer's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer.
- 3.4 **Delivery Responsibilities.**
 - 3.4.1 **Product.** Subject to the other provisions of this Agreement, commencing on the Commercial Operation Date, Supplier shall supply and deliver the Product to Buyer at the Delivery Point throughout the Term.

- 3.4.2 **Delivered Amount.** Buyer shall take delivery of the Net Energy, including any Excess Energy, at the Delivery Point in accordance with the terms of this Agreement. Supplier shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Energy up to the Delivery Point, including transmission costs, transmission line losses, and any operation and maintenance charges imposed by the Transmission Provider for the Interconnection Facilities. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Energy at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges. Without limiting the generality of the foregoing, Supplier, in accordance with the IA, shall bear all costs associated with the modifications to Interconnection Facilities or the Transmission System (including system upgrades) caused by or related to (a) the interconnection of the Generating Facility with the Transmission System and (b) any increase in generating capacity of the Generating Facility.
- 3.4.3 **Title and Risk of Loss.** Title and risk of loss with respect to Net Energy delivered by Supplier shall pass from Supplier to Buyer at the Delivery Point. Supplier shall be deemed in exclusive control of the Net Energy and shall be responsible for any damage or injury caused prior to and at the Delivery Point. Buyer shall be deemed in exclusive control and responsible for any damage or injury caused after the Delivery Point. Supplier warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.
- 3.5 **Renewable Energy System.** Notwithstanding anything in this Agreement to the contrary, Buyer shall not be obligated to purchase or accept delivery of Product if the Generating Facility is not at the time of delivery qualified as a Renewable Energy System; provided, if there is a change in the Renewable Energy Law after the execution of this Agreement that causes the Net Energy from the Generating Facility to be ineligible or non-qualifying as a Renewable Energy System under such Renewable Energy Law, Supplier shall use commercially reasonable efforts to comply with such Renewable Energy Law and Buyer's obligation to purchase Net Energy hereunder shall continue so long as Supplier satisfied its obligations with respect to compliance and costs hereunder. For purposes hereof, commercially reasonable efforts shall include the expenditure of amounts up to \$100,000 (the "**Compliance Cost Cap**") in any Contract Year. In the event a change in Renewable Energy Law occurs during one Contract Year which provides for a compliance deadline in a future Contract Year, if necessary to maintain or achieve compliance, Supplier shall be required to expend sums up to the Compliance Cap during each Contract Year from the date of the change in Renewable Energy Law until the compliance deadline. If Supplier reasonably concludes that it may incur costs in excess of the Compliance Cost Cap in any Contract Year in order to comply with the Renewable Energy Law, it shall provide Buyer with a notice itemizing such excess costs. Buyer shall evaluate

such notice and either: (1) agree to reimburse Supplier for such excess costs (the "Accepted Compliance Costs") or (2) waive Supplier's obligation to comply with the Renewable Energy Law. If Buyer agrees to reimburse Supplier for the Accepted Compliance Costs, then Supplier shall be required to comply in full with the Renewable Energy Law, and Buyer shall reimburse Supplier for Supplier's actual and reasonable compliance costs in excess of the Compliance Cost Cap, not to exceed the Accepted Compliance Costs. If Buyer elects not to reimburse Supplier for the Accepted Compliance Costs, then Supplier shall not be obligated to incur any amount in excess of the Compliance Cost Cap to maintain the Generating Facility as a Renewable Energy System following a change in the Renewable Energy Law, and Buyer's obligations to purchase Net Energy hereunder shall be regardless of the Generating Facility's status as a Renewable Energy System. If Supplier's inability to comply with the Renewable Energy Law cannot be cured by the expenditure of money, such noncompliance shall be excused and shall not constitute an Event of Default.

- 3.5.1 Renewable Energy Benefits. Notwithstanding anything in this Agreement to the contrary, Buyer shall not be obligated to purchase or accept delivery of Product if Supplier is not delivering to Buyer all of the Renewable Energy Benefits associated with the Net Energy being delivered.
- 3.6 Consumption. Supplier shall supply its Station Usage directly from the Generating Facility, with back-up provided by Standby Service, as governed by the special conditions relating to "Backup Power" pursuant to the Nevada Power Company Schedule LSR, Large Standby Service Rider, or any successor rate schedule or as may be amended from time to time by the PUCN. In accordance with the foregoing, Supplier shall, no later than the Operation Date, acquire Standby Service necessary to meet such back-up electrical requirements of the Generating Facility, provided, however, in no event may electrical energy provided by Standby Service be delivered as Net Energy.
- 3.7 Shortfall: Replacement Costs. Supplier shall pay Buyer the damages set forth in this Section 3.7 for any Shortfall (defined below) and any Penalties.
- 3.7.1 Summer Months – On-Peak.

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

- 3.7.1.2 If a Shortfall exists with respect to the Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. **“Shortfall Amount”** means, with respect to the Summer Months, an amount expressed in MWh equal to the Shortfall Threshold for such Summer Months minus the sum of all Delivered Amounts during the On-Peak hours of such Summer Months. If the calculation set forth in this Section 3.7.1.2 yields an amount of zero or less for the Summer Months, then no Shortfall Amount will be deemed to exist with respect to such Summer Months.
- 3.7.1.3 Buyer’s **“Replacement Costs”** with respect to any Summer Months shall equal (a) the Shortfall Amount multiplied by (b) the greater of (i) ten-percent (10%) of the Product Rate or (ii) an amount equal to Average On-Peak Mead Index for the Summer Months minus the Product Rate.
- 3.7.1.4 Within five (5) Business Days after the end of the Summer Months in which a Shortfall has occurred, Supplier will calculate the Replacement Costs with respect to such Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Replacement Costs are calculated.

3.7.2 **Non-Summer Months – On-Peak**

- 3.7.2.1 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 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 such Non-Summer Months, the product of (a) 0.90 multiplied by (b) the difference between (i) the sum of the Monthly On-Peak Supply Amount for such 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.
- 3.7.2.2 If a Shortfall exists with respect to the Non-Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. **“Shortfall Amount”** means, with respect to the Non-Summer Months, an amount expressed in MWh equal 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. If the calculation set forth in this Section 3.7.2.2 yields an amount of zero or less for the Non-Summer Months, then no Shortfall Amount will be deemed to exist with respect to such Non-Summer Months.

3.7.2.3 Buyer's "Replacement Costs" with respect to any Non-Summer Months shall equal (a) the Shortfall Amount multiplied by (b) an amount equal to Average On-Peak Mead Index for the Non-Summer Months minus the Product Rate. If the calculation of Replacement Costs as set forth in this Section 3.7.2.3 yields an amount of zero or less for such Non-Summer Months, then no Replacement Costs will be payable with respect to such Non-Summer Months.

3.7.2.4 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.

3.7.3 Not a Penalty. 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 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..

3.7.4 Calculations. As soon as practicable following any period of (a) Force Majeure, (b) Buyer's failure to accept Net Energy in breach of this Agreement, (c) Emergency (except for an Emergency with respect to the Generating Facility that is not also a Force Majeure), (d) Planned Outage, or (e) Curtailed Product, in each case as a result of which Supplier has failed to deliver Product to Buyer during such period and, subject to the terms of this Agreement, such failure and Supplier's liability for damages therefor were 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. 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.

3.8 PC Shortfall; PC Replacement Costs.

- 3.8.1** If after the PC Administrator issues all the PC statements or certificates for any Measurement Period there is a PC Shortfall, Supplier shall pay Buyer for the replacement costs associated with such PC Shortfall and calculated in accordance with this Section 3.8.1 and any Penalties ("PC Replacement Costs"). A "PC Shortfall" means the occurrence of the following with respect any Measurement Period: the sum of all Delivered PCs is less than the product of (a) 0.90 multiplied by (b) an amount equal to (i) the sum of the Yearly PC Amount for the years in such Measurement Period minus (ii) the total amount of PCs associated with Excused Product. "PC Shortfall Amount," with respect to any Measurement Period, means (a) the sum of the Yearly PC Amount for the years in such Measurement Period; minus (b) the total amount of PCs associated with Excused Product; minus (c) Delivered PCs; minus (d) replacement PCs delivered by Supplier to Buyer pursuant to Section 3.8.5. If the calculation of the PC Shortfall Amount set forth in this Section 3.8.1 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.
- 3.8.2** The PC Replacement Costs shall be determined by Buyer exercising its reasonable discretion based on the estimated cost of purchasing PCs to replace the PC Shortfall Amount that are from the same resource type, with a comparable expiration date or the cost of replacing the PC Shortfall Amount with PCs of Buyer's choice already in Buyer's PC Account; provided, however, that Buyer shall not be required to actually purchase replacement PCs in order to receive payment from Supplier for PC Replacement Costs. Buyer shall include in the PC Replacement Costs any Penalties allocable to Supplier's proportionate amount of Buyer's aggregate shortfall under the applicable Portfolio Standard (factoring in Supplier's shortfall in prior years carried forward as a deficit or reducing the surplus in such prior years).
- 3.8.3** The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.8 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the amount payable by Supplier pursuant to this Section 3.8 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.
- 3.8.4** 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.

- 3.8.5 For any Measurement Period for which there is a PC Shortfall, Supplier may reduce the PC Shortfall Amount by transferring a quantity of replacement PCs to Buyer. Such PCs must be from a then-qualified Renewable Energy System, none of Seller's costs with respect thereto may be included in any calculation of expenditures towards the Compliance Cost Cap, and such PCs must be from a solar resource and otherwise meet or exceed the standards, eligibilities and qualifications of the PCs that should have been delivered to Buyer under this Agreement.
- 3.9 Supply Degradation. Beginning with the second Contract Year, and each Contract Year thereafter, the Annual Supply Amount, each Supply Amount, the Maximum Amount and the Yearly PC Amount shall be reduced by one half percent (0.50%). Buyer shall revise Exhibits 13 and 18 accordingly, effective January 1 of such Contract Year.

4. PRICE OF PRODUCT

- 4.1 Product Payments. Supplier shall be paid for the Product based on the Delivered Amount of Net Energy, as follows:
 - 4.1.1 Upon the Operation Date and prior to the Commercial Operation Date, all Product associated with Delivered Amounts of Net Energy from the Generating Facility, other than Excess Energy (which shall not be compensable), shall be paid for by Buyer at the lesser of fifty percent (50%) of the applicable Product Rate or the Mead Index for the Delivery Hour ("Test Product Rate").
 - 4.1.2 Subsequent to the Commercial Operation Date.
 - 4.1.2.1 All Product associated with Delivered Amounts of Net Energy from the Generating Facility, other than Excess Energy, shall be paid for by Buyer at the applicable Product Rate set forth in Exhibit 2A and based on the quantity of Net Energy; provided, however, that such payment constitutes the entirety of the amount due to Supplier from Buyer for the Product, and provided further that Buyer shall be paid at the Test Product Rate for the calendar month in which the Commercial Operation Date occurs if the Commercial Operation Date occurs on or after the sixteenth (16th) day of such calendar month.

- 4.1.2.2 All Product associated with Excess Energy shall be paid for at sixty-five percent (65%) of the applicable Product Rate.
- 4.1.3 No payment shall be owing to Supplier for any Product associated Energy that is for any reason not Net Energy.
- 4.1.4 Buyer shall not be required to accept from Supplier any Product delivered during any Delivery Hour in excess of the Maximum Amount, and no payment shall be owing to Supplier for any Product accepted by Buyer during any Delivery Hour in excess of the Maximum Amount.
- 4.2 Excused Product. Buyer shall not be required to pay for Product comprising Excused Product, except to the extent Excused Product is the result of Buyer's failure to accept Net Energy in 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 Generation Facilities in whole or in part, or Supplier or its investors are unable to benefit from any Tax Credits. Supplier shall bear all risks, financial and otherwise, throughout the Term, associated with Supplier's or the Generating Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Supplier's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Supplier's obligation to deliver Net Energy and Product, shall be effective regardless of whether the sale of Energy or Net Energy from the Generating Facility is eligible for, or receives Tax Credits during the Term.

5. PORTFOLIO ENERGY CREDITS/RENEWABLE ENERGY BENEFITS

5.1 Delivery of Renewable Energy Benefits and Portfolio Energy Credits.

- 5.1.1 All Renewable Energy Benefits are exclusively dedicated to and vested in Buyer. Supplier shall deliver to Buyer all Renewable Energy Benefits derived from the Generating Facility, including Renewable Energy Benefits associated with Energy for Station Usage. Supplier shall timely prepare and execute all documents and take all actions necessary under Law or the requirements of any Governmental Authority or Person and otherwise to cause the Renewable Energy Benefits to vest in Buyer, without further compensation, including, but not limited to, (1) taking all actions necessary to register or certify any Renewable Energy Benefits or the Generating Facility with the PUCN or any other Person (pursuant to NAC 704.8921 or otherwise), (2) causing the automatic transfer of the Renewable Energy Benefits derived from the Generating Facility to Buyer (pursuant to NAC 704.8927 or otherwise), (3) providing all production data and satisfying the reporting requirements of the PUCN or PC Administrator, as applicable and (4) cooperating in any registration by

Buyer of the Generating Facility in any other renewable portfolio standard or equivalent program in any states in which Buyer may wish to register or maintain registration of the Generating Facility, including providing copies of all such information as Buyer reasonably requires for such registration. Without limitation of the foregoing, Supplier acknowledges that the Renewable Energy Benefits, may be used by Buyer in meeting its present and future obligations pursuant to applicable Law, including the Portfolio Standard, and agrees to cooperate reasonably with Buyer in all respects to assist in Buyer's compliance with all applicable requirements set forth in the Portfolio Standard and provide all information reasonably requested by Buyer or otherwise necessary to allow the PUCN to determine compliance with the Portfolio Standard. No Person other than Buyer (or its designee) will be entitled to claim Renewable Energy Benefits in any jurisdiction in connection with the Generating Facility. All representations and warranties made by Supplier with respect to Renewable Energy Benefits are freely transferrable by Buyer to any purchaser or transferee of such Renewable Energy Benefits or part thereof.

- 5.1.2 On or before January 31 of each calendar year following the Operation Date, Supplier, as owner or operator of the Renewable Energy System, shall deliver to Buyer a written attestation for the prior calendar year that no part of the Renewable Energy Benefits: have been or will be (a) used for or by any Person to obtain renewable energy credit in any state or jurisdiction, except for Buyer pursuant to this Agreement; (b) sold or otherwise exchanged for compensation or used for credit in any other state or jurisdiction; and (c) included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction, pursuant to Chapter 704 of the NAC. No Person other than Buyer (or its designee) will be entitled to claim Portfolio Energy Credits, Renewable Energy Benefits (or equivalents in any jurisdiction) in connection with the Generating Facility.
- 5.2 **Injunction.** If any Person other than Buyer (or its designee) attempts to claim such Renewable Energy Benefits or part thereof, the Parties agree that remedies at Law may be inadequate to protect Buyer in the event of a breach of this Section 5.2, and the Supplier hereby in advance agrees (i) that Buyer shall be entitled to seek without proof of actual damages or the necessity of posting any bond or other security, temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Supplier or any applicable third parties from committing or continuing any breach of this Section 5.2, and (ii) that Supplier will promptly undertake all necessary actions to prevent such other Person from claiming such Renewable Energy Benefits (including joining with or otherwise assisting Buyer in seeking the relief described in clause (i)).
- 5.3 **Transfers.** Buyer shall be entitled to PC Replacement Costs for Renewable Energy Benefits associated with any Energy for which WREGIS Certificates, PCs or any

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

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

6.1 Right of First Offer.

- 6.1.1 After January 1, 2018, Supplier shall not (and shall cause any direct, or indirect parent of Supplier whose principal assets are Supplier or the Generating Facility not to) (for purposes of Section 6.1, each a "**ROFO Seller**"), sell, transfer or offer, or negotiate to sell or transfer, the Generating Facility, any material portion of such Person's assets or any direct or indirect equity interests in Supplier (the "**Offered Interests**") to a third party, other than to an Affiliate in accordance with the provisions of Section 23.2 or as part of an arm's-length transaction between Supplier and Supplier's Lenders (each a "**Restricted Transaction**") except in accordance with this Section 6.1.1. If a ROFO Seller intends to enter into a Restricted Transaction, it shall provide Buyer with written notice of same (a "**Seller ROFO Notice**"), and Buyer shall have a right of first offer with respect to the purchase of such Offered Interests. Within fifteen (15) days after receipt of the Seller ROFO Notice, Buyer shall notify Supplier in writing of its decision whether or not to negotiate with ROFO Seller for the purchase of the Offered Interests (the "**Buyer ROFO Notice**"). If Buyer elects to negotiate with ROFO Seller for the purchase of the Offered Interests, ROFO Seller shall negotiate in good faith and exclusively with Buyer, for a period of not less than one hundred twenty (120) days following ROFO Seller's receipt of the Buyer ROFO Notice, the terms of a purchase by Buyer or its designee of the Offered Interests (such fifteen (15)-day period as extended, if applicable, by such one hundred twenty (120)-day period, the "**ROFO Period**").
- 6.1.2 In the event that Buyer does not elect to negotiate with ROFO Seller for the purchase of the Offered Interests pursuant to Section 6.1.1, or if definitive transaction documents between ROFO Seller and Buyer or its designee have not been executed with respect to the Offered Interests

within the ROFO Period, ROFO Seller may negotiate a Restricted Transaction with any other Person, subject, in all cases, to the terms and conditions of this Agreement, including, but not limited to, Section 6.1.3 and Section 6.2 below and the provisions of Article 23. In no event may ROFO Seller enter into a Restricted Transaction with any other Person on terms less favorable to ROFO Seller than such terms, if any, as were offered by Buyer during the ROFO Period.

- 6.1.3 If ROFO Seller and such other Person do not agree upon the terms, conditions and pricing for the Offered Interests within one hundred 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 Purchase Option at the End of Term.

- 6.2.1 Supplier hereby grants to Buyer the option to purchase the Generating Facility at the Fair Market Value of the Generating Facility at the end of the Term (the "Final Purchase Option") by providing written notice to Supplier no less than two hundred and forty (240) days prior to the end of the Term of its interest in exercising the Final Purchase Option ("Preliminary Interest Notice").

- 6.2.2 Exercise of Final Purchase Option. Within three (3) months following the determination of the Fair Market Value of the Generating Facility pursuant to Section 6.3.1 (and as applicable, Section 6.3.2), Buyer shall notify Supplier if the Buyer elects to exercise the Final Purchase Option (the "Final Purchase Option Confirmation Notice").

6.3 Fair Market Value.

- 6.3.1 Determination of Fair Market Value of the Generating Facility. Promptly following delivery of the Preliminary Interest Notice, Buyer and Supplier shall mutually agree to the Fair Market Value of the Generating Facility. If Buyer and Supplier cannot mutually agree to a Fair Market Value of the Generating Facility within one (1) month of delivery of the Preliminary Interest Notice, then Buyer and Supplier shall each select and retain, at their own cost and expense, a nationally recognized independent appraiser with experience and expertise in appraising solar photovoltaic generation facilities to determine separately the value of the Generating Facility. Subject to the appraisers' execution and delivery to Supplier of a suitable confidentiality agreement in a form reasonably acceptable to Supplier, Supplier shall provide both appraisers access to the Generating Facility and its books and records during business hours and upon prior written notice. The appraisers shall act reasonably and in good faith to determine the Fair Market Value of the Generating Facility and the Parties shall use their best efforts to cause the appraisers to complete such determination no later than two (2) months following delivery of the Preliminary Interest

Notice. If for any reason (other than failure by Supplier to provide access hereunder to Buyer's appraiser), one of the appraisals is not completed within three (3) months following delivery of the Preliminary Interest Notice, the results of the other completed appraisal shall be deemed the Fair Market Value of the Generating Facility. Buyer and Supplier may provide to both appraisers a list of factors which they suggest be taken into consideration when the appraisers generate their appraisals, consistent with industry standards prevailing at such time for appraising solar photovoltaic generation facilities. Any information provided to an appraiser by the Supplier or Buyer shall be provided to the other appraiser and the other Party at the same time, it being the intent of the Parties that the appraisers have access to the same information. Buyer and Supplier shall deliver the results of their respective appraisal to the other Party when completed. If so requested by either Buyer or Supplier, the appraisals shall be exchanged simultaneously. After both appraisals are completed and exchanged, the Parties and their appraisers shall promptly confer and attempt to agree upon the Fair Market Value of the Generating Facility.

6.3.2 Disagreement as to Value. If, within one (1) month after completion of both appraisals, Buyer and Supplier cannot agree on the Fair Market Value of the Generating Facility, and the values of the appraisals are within ten percent (10%) of each other, the Fair Market Value of the Generating Facility shall be the simple average of the two appraisals. If the values of the two appraisals differ by ten percent (10%) or more, the first two appraisers shall choose a third independent appraiser experienced in appraising solar photovoltaic generation assets, or, if the first two appraisers fail to agree upon a third appraiser within ten (10) days after the expiration of the one (1) month period following completion of both appraisals, such appointment shall be made by the American Arbitration Association ("AAA") upon application of Buyer or Supplier in accordance with the applicable rules and regulations of the AAA for such selection. If the AAA declines or otherwise fails to select the third appraiser within thirty (30) days of application therefor, such appointment shall be made by the Judicial Arbitrator Group, Inc., upon application of either Buyer or Supplier. The third appraiser shall have access to the same information as was available to the two other appraisers. Buyer and Supplier shall direct the third appraiser to determine the Fair Market Value of the Generating Facility within two (2) months following his retention. The costs and expenses of such third appraiser shall be shared equally by Buyer and Supplier. Upon completion of the Fair Market Value appraisal of the Generating Facility by such appraiser, the Fair Market Value of the Generating Facility will be the simple average of the three (3) appraisal values completed in accordance with this Section 6.3.2.

6.4 Efforts Required to Transfer Generating Facility. If Buyer exercises the Final Purchase Option or otherwise agrees to purchase the Generating Facility pursuant to Section 6.1 or 6.2, then after all necessary regulatory approvals are received,

Supplier will take all actions necessary to transfer by deed, bill of sale, or both, the Generating Facility to Buyer, as well as all other improvements placed on the Project Site by Supplier that are required for the continued and uninterrupted use, maintenance and operation of the Generating Facility, free and clear from any lien or monetary encumbrance for which Supplier or its representatives are responsible. In addition, Supplier will (i) assign to Buyer all transferrable permits and Required Facility Documents, as well as Supplier's interest in the IA and all transferrable warranties for the Generating Facility and (ii) convey to Buyer the Real Property Rights. Supplier shall cooperate with Buyer to assign and enforce any and all warranties that apply to the Generating Facility or any of its component parts, which obligation shall survive the termination of this Agreement. If Buyer agrees to purchase the Generating Facility or any Offered Interests pursuant to Section 6.1 or 6.2, such purchase shall occur pursuant to a form of purchase and sale agreement with customary representations, warranties and covenants and in form reasonably acceptable to Buyer, which purchase shall be conditioned upon Buyer obtaining all necessary regulatory approvals.

- 6.5 Due Diligence; Cooperation; Regulatory Approvals; Notice of Rights. Supplier will provide in a timely manner, information regarding the Generating Facility which is reasonably requested by Buyer to allow Buyer to perform due diligence for the purchase of the Generating Facility pursuant to Section 6.1 or 6.2. Supplier shall further provide commercially reasonable cooperation and assistance to Buyer, without further compensation, throughout Buyer's efforts to properly account for and obtain and necessary regulatory approvals with respect to the purchase of the Generating Facility pursuant to Section 6.1 or 6.2. Notwithstanding anything in this Agreement or any definitive transaction documentation, Buyer shall not be obligated to proceed with the purchase of the Generating Facility or any Offered Interests pursuant to Section 6.1 or 6.2 if Buyer does not receive all necessary regulatory 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 Section 6.1 or 6.2. Buyer shall be permitted to file a notice of the rights contained in Section 6.1 or 6.2 with respect to the Project Site.

7. METERING, INVOICING AND PAYMENTS

7.1 Metering.

- 7.1.1 Meters. Buyer shall, at Supplier's cost, provide, install, own, operate and maintain all Meter(s) in good operating condition. If more than one Meter is installed, then data from all Meters shall be aggregated into one revenue Meter. The metering system design shall be subject to the Buyer's approval and shall be submitted to Buyer not later than the Supplier's completion of the Project Milestone relating to obtaining of construction permits. The Meters shall be used for quantity measurements under this Agreement. Such equipment shall be bi-directional and shall be capable of measuring and reading instantaneous and hourly real and reactive energy and capacity. The Meters shall also be used for, among other things,

metering Station Usage of the Generating Facility. Supplier, at its expense, may install additional check meters. Supplier shall not install any check-metering equipment on or connected to Buyer-owned facilities including instrument transformers or metering circuitry wiring. Supplier shall, at its sole expense, install any additional or different Meters or related equipment necessary to comply with the requirements of Transmission Provider, any Electric System Authority or any Governmental Authority.

- 7.1.2 **WREGIS Metering.** Supplier shall cause, at its sole cost and expense, the Generating Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Generating Facility and only the Generating Facility. Supplier shall be responsible to obtain all qualified reporting entity services required by WREGIS at Supplier's expense should Buyer not in its sole and absolute discretion provide them.
- 7.1.3 **Location.** Meters shall be installed at the location specified in Exhibit 5, or as otherwise specified in the IA.
- 7.1.4 **Non-Interference.** Supplier shall not undertake any action that may interfere with the operation of the Meters. Supplier shall be liable for all costs, expense, and liability associated with any such interference with the Meters.
- 7.1.5 **Meter Testing.** Meters shall be tested at least once every two calendar years by Buyer. Either Party may request a special test of Meters or check meters, but the requesting Party shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case the Party whose meters were found to be inaccurate shall be responsible for the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment or calibration of the Meters or check meters. Buyer's Operating Representative shall provide fifteen (15) Business Days prior notice of routine Meter testing to Supplier's Operating Representative. If Supplier has installed check meters in accordance with Section 7.1.1, Supplier shall test and calibrate each such meter at least once every two calendar years. Supplier's Operating Representative shall provide fifteen (15) Business Days prior notice of routine check meter testing to Buyer's Operating Representative. In the event of special Meter testing, the Parties Operating Representatives shall notify each other with as much advance notice as practicable.

7.1.6 Metering Accuracy. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Buyer shall repair and recalibrate or replace the Meters and Buyer shall adjust payments to Supplier for the Delivered Amount for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; however, the adjustment period shall not exceed ninety (90) days. If adjusted payments are required, Buyer shall render a statement describing the adjustments to Supplier within thirty (30) days of the date on which the inaccuracy was rectified. Additional payments to Supplier by Buyer shall be made within thirty (30) days of receipt of Buyer's statement. Any payments due Buyer pursuant to this Section 7.1.6 shall accompany Supplier's next Billing Period statement.

7.1.7 Failed Meters. If the Meters fail to register, Buyer shall make payments to Supplier based upon Supplier's check metering; provided, however, that if the accuracy of the check meters is subsequently determined to be outside the limits established in ANSI C12.1, Buyer shall adjust the payments to Supplier for the Delivered Amount calculated using the check meters for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the check meters; however, the adjustment period shall not exceed ninety (90) days. If no such metering is available, payments shall be based upon the Parties' best estimate of the Delivered Amount. In such event, such payments made based upon the Parties' estimate of the Delivered Amount shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount the Dispute shall be resolved in accordance with Article 21.

7.1.8 Weather Meter. Supplier shall, at Supplier's cost and no later than six (6) months prior to the Commercial Operation Date, provide, install, own, operate and maintain a device for the measurement of actual direct normal irradiance at the Project Site (the "Weather Meter"), provided that Supplier shall not select the type of Weather Meter without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than twelve (12) months prior to the Commercial Operation Date, the Parties shall agree on the location of the Weather Meter and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Meter.

7.2 Invoices.

7.2.1 Monthly Invoicing and Payment. On or before the 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 by Supplier or Supplier is notified by Buyer 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 3.8.1) 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 Owning to Buyer. The Invoice referred to in Section 7.2.1 shall offset any amounts owing to Buyer with amounts owing to Supplier, and shall indicate the net payment due Supplier or Buyer, as applicable. Supplier shall provide supporting data in reasonable detail to support its calculations of any amounts owing to Buyer. Buyer may prepare and send to Supplier an Invoice for amounts owing to Buyer, and any such amounts will be payable to Buyer within ten (10) Business Days from Supplier's receipt of such Invoice, subject to the terms and provisions of Section 7.2.5.

7.2.4 Method of Payment. Buyer or Supplier, as applicable, shall remit the payment of any undisputed amounts by wire or electronic fund transfer or otherwise pursuant to the instructions stated in Exhibit 4. Payment will be made on or before the later of the twentieth (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) calendar days of the date of receipt of the adjusted Invoice. If such error resulted in a

refund owed to the invoiced Party, the invoicing Party shall pay the invoiced Party the amount of the adjusted Invoice within thirty (30) calendar days of the date of the statement or at the invoiced Party's option, the invoiced Party may net such amount against the subsequent monthly payment to Invoicing Party.

7.2.5.3 If an invoicing Party fails to provide the invoiced Party with notice of any alleged error in the invoicing Party's Invoice within three (3) years of the invoiced Party's receipt of such Invoice, then the invoicing Party shall be deemed to have waived all rights to object to such Invoice.

- 7.3 **Overdue Amounts and Refunds.** Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case may be, to the date of payment of such overdue amounts or refund at a rate calculated pursuant to 18 C.F.R. § 35.19a.
- 7.4 **Access to Books and Records.** Supplier agrees to make available for inspection upon five (5) Business Days written notice from Buyer its books and records for the purpose of allowing Buyer to verify the information contained within the invoices presented pursuant to Section 7.2.
- 7.5 **Parties Right to Offset.** Either Party shall have the right to offset any amounts owed to the other Party under this Agreement or with respect to Standby Service.
- 7.6 **Taxes.** Buyer is responsible for any Taxes imposed on or associated with the Net Energy or its delivery from and after the Delivery Point. Supplier is responsible for any Taxes imposed on or associated with the Net Energy or its delivery up to or at the Delivery Point. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax. Each Party shall hold harmless the other Party in accordance with Article 18 from and against Taxes imposed on the other Party as a result of such Party's actions or inactions in contravention of this Section 7.6.

8. FACILITY CONSTRUCTION; OPERATIONS AND MODIFICATIONS

- 8.1 **Construction of Generating Facility.** Supplier shall construct or cause the Generating Facility to be constructed in accordance with Good Utility Practices, in accordance with the Project Milestones and to ensure that (a) Supplier is capable of meeting its supply and delivery obligations over the Term, (b) the Generating Facility is at all times considered a Renewable Energy System, except to the extent excused pursuant to Section 3.5, and (c) the Generating Facility is at all times in compliance with all requirements imposed on Renewable Energy Systems as set forth in the applicable Renewable Energy Law, except to the extent excused pursuant to Section 3.5. Supplier shall construct or cause the Generating Facility to be constructed on the Project Site. Supplier shall deliver to Buyer an

ALTA Survey of the Project Site within ten (10) days of such survey becoming available to Supplier, but in no event later than the issuance of the Notice to Proceed in accordance with Exhibit 6. Supplier shall provide to Buyer, within thirty (30) days after execution of the IA, or if the IA has already been executed, within 5 Business Days of the execution of this Agreement, a copy of the IA, showing that such IA conforms in all respects to the single line diagram of the Generating Facility, Interconnection Facilities, the Delivery Point and the location of Meters as set forth in Exhibit 5, except for changes from Exhibit 5 that have been consented to by Buyer in writing in its sole discretion, in which case Supplier shall provide a revised Exhibit 5 reflecting such changes. Supplier shall provide to Buyer in a form satisfactory to Buyer (y) not later than the Supplier's completion of the Project Milestone relating to obtaining of construction permits, a completed version of Exhibit 14; and (z) within thirty (30) days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Generating Facility as built. At Buyer's request, Supplier shall provide Buyer with copies of the EPC Contract for the facility and any documentation and drawings reasonably requested by Buyer, redacted of any pricing information and any other information Supplier is not permitted to disclose pursuant to a confidentiality agreement.

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

8.2.1 Completion of Project Milestones. Upon Supplier's completion of each Project Milestone, Supplier shall provide to Buyer in writing, pursuant to Section 29.1, documentation as specified in Exhibit 6 and reasonably satisfactory to Buyer demonstrating such Project Milestone completion. Such documentation shall be provided within thirty (30) days of such completion but not later than the date specified for such Project Milestone listed in Exhibit 6. Buyer shall acknowledge receipt of the documentation provided under this Section 8.2.1 and shall provide Supplier with written acceptance or denial of each Project Milestone within fifteen (15) Business Days of receipt of the documentation. Failure of Supplier to achieve a Critical Project Milestone on or before the scheduled date will constitute an Event of Default as provided in Article 24. If any Project Milestone (other than a Critical Project Milestone) is not completed on or before the date specified in Exhibit 6, Supplier will (i) inform Buyer of a revised projected date for the occurrence or completion of such event (which will be deemed the new deadline for such Project Milestone), and any impact on the timing of the Commercial Operation Date (and on any other Project Milestone) and (ii) provide Buyer with a written report containing Supplier's analysis of the reasons behind the failure to meet the original Project Milestone deadline and whether remedial actions are necessary or appropriate, and describing any remedial actions that the Supplier intends to undertake to ensure the timely achievement of the Commercial Operation Date. Provided that Supplier complies with the preceding sentence, no failure of Supplier to achieve a Project Milestone

(other than a Critical Project Milestone) on or before the scheduled date will constitute an Event of Default.

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

8.3 **Commercial Operation Date.**

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

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

8.3.2.1 A certification (certified by an officer of Supplier) stating the following:

"I, [Name], in my capacity as the duly appointed [Title] of [Supplier] ("Supplier") hereby certify, on behalf of Supplier that (a) the Generating Facility has been constructed in accordance with the requirements of the IA and Good Utility Practice and has delivered Net Energy to and at the Delivery Point; (b) all of the requirements set forth in Sections 8.1 and 8.3, and Exhibits 6 and 7 of the Long-Term Renewable Power Purchase Agreement between Supplier and Buyer dated [] have been satisfied; (c) I am authorized to act on behalf of and bind Supplier with respect to this certificate; (d) Supplier acknowledges that Buyer is relying on this certification in connection with carrying out its obligations under the Agreement and Supplier will indemnify Buyer for any inaccuracy related to this certification."

- 8.3.2.2 A certificate addressed to Buyer from a Licensed Professional Engineer confirming: (1) the nameplate capacity rating of the Generating Facility at the anticipated time of Commercial Operation in MW AC, (2) the net capacity rating of the Generating Facility at the anticipated time of Commercial Operation, measured at the Delivery Point in MW AC ("Certified Net Capacity Rating"), (3) that the Generating Facility is able to generate and deliver electric power reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof; and, (4) performance tests required by Exhibit 7 have been completed. The Certified Net Capacity Rating must not be less than 90 MW AC.
- 8.3.2.3 A certificate addressed to Buyer from a Licensed Professional Engineer stating that, in accordance with the IA, all required interconnection facilities have been constructed, all required interconnection tests have been completed, all costs associated with the IA have been paid and the Generating Facility is physically interconnected with the System in conformance with the IA 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, parent or subsidiary) and has no financial interest in the Generating Facility addressed to Buyer stating that Supplier has received the Supplier Required Regulatory Approvals listed in Exhibit 10 and has entered into or obtained all Required Facility Documents as listed in Exhibit 12, and attaching copies of the Supplier Required Regulatory Approvals listed in Exhibit 10 and all Required Facility Documents listed in Exhibit 12, provided, however, that Supplier may redact or omit confidential or commercial terms from such documents. The opinion shall further state that the Real Property Rights obtained by Supplier with respect to the Project Site are adequate in all respects for the ownership, operation, access to and maintenance of the Generating Facility as of the date of the opinion.
- 8.3.2.5 Confirmation from the Transmission Provider that the Supplier has paid all costs and fulfilled all obligations associated with the IA for the Generating Facility to commence commercial operation with Network Resource Interconnection Service.

8.3.3 Dispute of Commercial Operation. Buyer will have fifteen (15) Business Days after receipt of the certifications required by this Section 8.3 in which to contest the Commercial Operation Date by written notice to Supplier. In the event of such a Dispute, Buyer and Supplier will then attempt for no more than fifteen (15) Business Days after Buyer's notice of Dispute to resolve the Dispute. If the Parties are unable to resolve the Dispute within fifteen (15) Business Days, then either Party may seek resolution of the Dispute in accordance with Section 21. Notwithstanding the foregoing, Buyer's failure to Dispute the certification will in no way affect its rights to indemnification for any inaccuracy related to the certification, including, for any loss of the required extension payment that would have otherwise been due pursuant to Section 8.4 or overpayments that may be paid by Buyer due to such inaccurate certification.

8.4 Failure to Achieve Commercial Operation.

8.4.1 If Buyer terminates this Agreement due to an Event of Default of Supplier prior to the Commercial Operation Date, neither Supplier nor Supplier's Affiliates may sell, or enter into a contract to sell, Net Energy or any Product generated by, associated with or attributable to a generating facility installed at the Project Site to a party other than Buyer for a period of three (3) years following the effective date of such termination ("Restricted Period"). This prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than Buyer, Supplier or Supplier's Affiliate provides Buyer with a written offer to sell the Net Energy or any Product to Buyer at the Product Rate and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and Buyer fails to accept such offer within forty-five (45) days after its receipt thereof. Neither Supplier nor Supplier's Affiliates may sell or transfer the Generating Facility, or any part thereof, or land rights or interests in the Project Site (including Supplier's interest in the interconnection queue position) during the Restricted Period so long as the limitations contained in this Section 8.4.1 apply, unless the transferee agrees to be bound by the terms set forth in this Section 8.4.1 pursuant to a written agreement approved by Buyer. Buyer shall be permitted to file a notice of the rights contained in this Section 8.4.1 with respect to the Project Site. Supplier shall indemnify and hold Buyer harmless from all Losses sustained by Buyer as a result of any breach of the covenants contained within this Section 8.4.1.

8.4.2 The provisions of this Section 8.4 are in addition to, and not in lieu of, any of Buyer's rights or remedies under this Agreement, including Article 24.

8.5 Delay Damages.

8.5.1 In the event the Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline, for each day, up to two hundred forty (240) days, that the Supplier fails to achieve Commercial Operation

thereafter, Supplier shall pay to Buyer liquidated damages equal to Daily Delay Damages. If Daily Delay Damages have been accumulated for one hundred twenty (120) days and Commercial Operation has not been achieved, Buyer may terminate this Agreement within ten (10) Business Days after such date and upon written notice to Supplier. If Buyer does not terminate this Agreement at that time and Delay Damages have accumulated for an additional sixty (60) days, then Buyer may terminate this Agreement. Supplier shall pay any amounts owed to Buyer under this Section 8.5 in the Billing Period immediately succeeding the Billing Period during which Supplier's obligation to pay such amounts arose.

- 8.5.2 In addition to amounts payable pursuant to Section 8.5.1, Supplier shall be liable, in accordance with Section 18.1, for any Penalties incurred or suffered by Buyer as a result of Supplier's failure to achieve Commercial Operation by the Commercial Operation Deadline.
- 8.5.3 The provisions of this Section 8.5 are in addition to, and not in lieu of, any of Buyer's rights or remedies under Article 24.
- 8.5.4 The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if the Supplier does not meet its obligations hereunder prior to the Commercial Operation Deadline, and, accordingly, the Parties agree that payment by Supplier of Daily Delay Damages is reasonable as liquidated damages, and is not a penalty.
- 8.6 **Deficit Damages.** If the Certified Net Capacity Rating is less than the Expected Net Capacity Rating, Supplier shall provide Buyer a onetime payment in an amount equal to (a) subtracting (i) Certified Net Capacity Rating from (ii) the Expected Net Capacity Rating in MWs, multiplied by (b) four hundred thousand and 00/100 dollars (\$400,000.00) per MW of difference ("**Deficit Damages**"). Supplier's total liability for Deficit Damages shall not exceed four million and 00/100 dollars (\$4,000,000.00). Deficit Damages, if any, shall be paid to Buyer within five (5) business days of Buyer's receipt of the certification required in Section 8.3.2.2. Upon payment of Deficit Damages, (i) Exhibit 1 shall be revised to reflect the Certified Net Capacity Rating, (ii) the Annual Supply Amount, each Supply Amount, the Maximum Amount and the Yearly PC Amount shall each be adjusted by the ratio of the Certified Net Capacity Rating to the Expected Net Capacity Rating, and Exhibits 13 and 18 shall be revised accordingly.
- 8.7 **Modification.** Without the prior written consent of Buyer, which may be withheld in Buyer's sole discretion, Supplier shall not make any modification to the Generating Facility that might (a) expose Buyer to any additional liability or increase its obligations under this Agreement or (b) adversely affect Supplier's or Buyer's ability to perform its obligations under this Agreement or any Law or to any third party. Any permitted modifications shall be conducted in accordance with Good Utility Practice and all applicable Laws and reliability criteria, as such

may be amended from time to time, and the requirements of Article 11. If Supplier makes a modification to the Generating Facility that is not approved by Buyer, Buyer shall be entitled to receive in addition to any other remedy available to Buyer as liquidated damages an amount equal to the Development Security, which may be obtained by Buyer by retention of the Development Security.

- 8.8 **Operation and Maintenance.** Supplier, at all times shall install, operate, maintain and repair the Generating Facility in accordance with Good Utility Practice and applicable Laws and to ensure (a) Supplier is capable of meeting its supply obligations over the Term, (b) the Generating Facility is at all times a Renewable Energy System, except to the extent excused pursuant to Section 3.5, and (c) Supplier is at all times in compliance with all requirements of a renewable energy generator set forth in the Renewable Energy Law, except to the extent excused pursuant to Section 3.5. Supplier shall (x) maintain records of all operations of the Generating Facility in accordance with Good Utility Practice, and (y) follow all regulations, directions and procedures of Buyer, Transmission Provider, any Electric System Authority and any other Governmental Authority to protect and prevent the Transmission System from experiencing any negative impacts resulting from the operation of the Generating Facility. In the event of an inconsistency between any applicable procedures, Buyer may direct which procedures shall govern (or barring direction from Buyer, the more stringent procedure shall govern). Supplier shall use all reasonable efforts to avoid any interference with Buyer's operations. Supplier shall cause the Energy to meet the Power Quality Standards at all times, and shall operate the Generating Facility consistent with WECC, NERC, Buyer, Electric System Authority, Governmental Authority and Transmission Provider requirements.
- 8.9 **Operation and Maintenance Agreement.** No later than one hundred eighty (180) days prior to the Commercial Operation Date, if Supplier intends to contract or subcontract the operation of the Generating Facility, Supplier shall provide a copy of any proposed agreement, which may be redacted to remove pricing information, between Supplier and such contractor which requires the contractor to operate the Generating Facility in accordance with the terms hereof which shall be attached to this Agreement as Exhibit 15. Supplier shall also provide a certified copy of a certificate warranting that the contractor is a corporation, limited liability company or partnership in good standing with the State in which the Generating Facility is located, which shall be attached to this Agreement as part of Exhibit 15. Buyer shall have fifteen (15) days in which to notify Supplier of its objection to any proposed contractor other than an Affiliate of First Solar, Inc. with experience comparable to First Solar Electric, LLC, in which case Supplier shall not subcontract with such proposed contractor.
- 8.10 **Ground Lease: Rights-of-way.** No later than sixty (60) days prior to commencement of on-site development activities at the Generating Facility, Supplier shall provide evidence of title (if the Project Site is owned by Supplier) or a copy of the ground lease or other agreement with the fee owner of the Project Site which establishes the right of Supplier to construct, maintain, access and operate the Generating Facility on the Project Site and any required rights-of-way

and easements (collectively, the "Real Property Rights"), which may be redacted to protect pricing information and shall be attached to this Agreement as Exhibit 16.

- 8.11 Fossil Fuel. If the Generating Facility uses any fossil fuel to produce Energy, Supplier shall not permit, without the express prior written consent of Buyer, fossil fuel to constitute more than two percent (2%) of the total input, as measured in British thermal units, used by the Generating Facility to produce Energy.
- 8.12 Right to Review. Buyer shall have the right to review during normal business hours the relevant books and records of Supplier to confirm the accuracy of anything relating to this Agreement. Buyer is under no obligation to exercise any of these review rights. Buyer shall have no liability to Supplier for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to the Generating Facility or this Agreement.
- 8.13 Undertaking of Agreement; Professionals and Experts. Supplier has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Supplier may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Supplier. In entering into this Agreement and the undertaking by Supplier of the obligations set forth herein, 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.
- 8.14 Network Resource Designation. Within thirty (30) days after the Effective Date, Buyer will submit an application to Transmission Provider to designate the Generating Facility as a Network Resource. Supplier will provide all information related to the Generating Facility required for such application. Buyer will provide a copy of such notice to Supplier.

9. EMERGENCY

- 9.1 Compliance. Supplier shall promptly comply with any applicable requirements of any Electric System Authority, Governmental Authority, Transmission Provider, transmission operator, or their successors, regarding the reduced or increased generation of the Generating Facility or otherwise in the event of any Emergency.
- 9.2 Notification. Supplier shall provide prompt oral and written notification to Buyer of any Emergency with a description in reasonable detail of the Emergency and any steps employed to cure it.
- 9.3 Due Care. In the event of an Emergency, either Party may take reasonable and necessary action to prevent, avoid or mitigate Loss or to expedite restoration of service; provided, however, that Supplier shall give Buyer prior notice, if

practicable, before taking any action. This Section 9.3 shall not be construed to supersede Sections 9.1 and 9.2.

9.4 **Not Excused Product.** An Emergency declared by Supplier will not result in any Excused Product except to the extent the Emergency qualifies as an event of Force Majeure.

9.5 **No Buyer Liability.** Buyer shall have no payment responsibility in respect of Product Buyer is unable to receive due to an Emergency or Force Majeure.

10. CURTAILMENT

10.1 **Compliance.** Supplier shall obey all order for curtailment of Energy by the Transmission Provider or any Electric System Authority. In no event shall any compliance or curtailment of Energy made in response to such an order impose any liability on Buyer. Buyer has no obligation to pay any amounts to Supplier with respect to any Curtailed Product.

10.2 **Curtailments.** Without limiting Section 10.1, Buyer shall not be obligated to purchase, receive, pay for, or pay any damages associated with, Net Energy (or associated Renewable Energy Benefits) if such Net Energy (or associated Renewable Energy Benefits) is not delivered to the Transmission System or Delivery Point for any reason, including due to any of the following: (a) the interconnection between the Generating Facility and the Transmission System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the IA, (b) the Transmission Provider, Electric System Authority or Market Operator directs a general curtailment, reduction, or redispatch of generation in the area, (which would include the Net Energy) for any reason, even if such curtailment or redispatch directive is carried out by Buyer, which may fulfill such directive by acting in its sole discretion, (c) if Buyer curtails or otherwise reduces the Net Energy in order to meet its obligations to the Transmission Provider, Electric System Authority or Market Operator to operate within system limitations, (d) the Generating Facility's Energy is not received because the Generating Facility is not fully integrated or synchronized with the Transmission System or (e) an event of Force Majeure prevents either Party from delivering or receiving Net Energy. Buyer agrees not to curtail the Generating Facility for the intended purpose of achieving economic savings by not purchasing energy from the Generating Facility; provided, however, that if any of Sections 10.2(a) through 10.2(e) are applicable, Buyer shall be rebuttably presumed not to be curtailing the Generating Facility for such reason. Supplier has the right, upon reasonable notice, to examine Buyer's records relating to curtailment pursuant to Sections 10.2(a) through 10.2(e).

10.3 **Curtailed Product.** The amount of Net Energy curtailed under Section 10.1 or 10.2 ("**Curtailed Product**") shall be reasonably determined by Supplier after the curtailment has ended based upon the Net Energy that could have been generated and delivered to Buyer at the Delivery Point, but that was not generated and delivered solely as a result of such curtailment. Supplier shall promptly provide

Buyer with such information and data as Buyer may request to confirm the amount of Curtailed Product that was not generated as a result of the curtailment. During any such period of curtailment, Supplier shall not produce Energy (to the extent curtailed by Transmission Provider) or sell Product to any third party. Curtailed Product shall constitute Excused Product for purposes of calculating a Shortfall or PC Shortfall. Under no circumstance shall the provisions of this Section 10.3 apply to a curtailment of the Generating Facility based upon an Emergency with respect to the Generating Facility.

11. PLANNED OUTAGES

- 11.1 **Approvals.** Supplier shall request and obtain Buyer's prior written approval, which approval shall not be unreasonably withheld, before conducting, during daylight hours, any non-forced outage of the Generating Facility or reducing the capability of the Generating Facility to deliver the Supply Amount (each such reduction or outage, a "Planned Outage"). Supplier shall provide Buyer written notice no less than five (5) Business Days prior to conducting a Planned Outage during non-daylight hours. Supplier shall conduct a Planned Outage so as to minimize the impact on the availability of the Generating Facility. Supplier shall only schedule Planned Outages during the months of March, April, October and November, unless otherwise approved by Buyer, or as restricted by Law.
- 11.2 **Schedules.** Planned Outages will be scheduled and conducted in accordance with the following:
- 11.2.1 Within ninety (90) days prior to the Commercial Operation Date and on or before October 1 of each Contract Year, Supplier shall provide Buyer with a schedule of proposed Planned Outages for the upcoming calendar year or Contract Year, as applicable. The proposed schedule will designate the hours and amount (in MWs) in which the Energy will be reduced in whole or in part. Each proposed schedule shall include all applicable information, including the following: month, day and time of requested outage, facilities impacted, duration of outage, purpose of outage and other relevant information. The total combined hours of Planned Outages in any Contract Year shall not exceed four percent (4%) of the MWs comprising the Annual Supply Amount (prorated for the Stub Period, if any) unless otherwise approved by Buyer.
- 11.2.2 Buyer shall promptly review Supplier's proposed schedule and either request modifications or approve the proposed schedule within thirty (30) days of Buyer's receipt of such schedule. Product not delivered to Buyer during periods of Planned Outages, up to the MWs specified, (a) will comprise Excused Product to the extent such Planned Outages are conducted in accordance with the Planned Outage schedule approved by Buyer in accordance with this Article 11, and (b) will not comprise Excused Product to the extent any outage period or MWs exceed its approved schedule, or is not approved by Buyer. Supplier shall make

reasonable efforts to accommodate proposed revisions to the approved Planned Outage(s) schedule by Buyer.

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

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

12. REPORTS; OPERATIONAL LOG

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

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

12.3 **Notices of Change in Generating Facility.** In addition to any consent required pursuant to Section 8.7, Supplier shall provide notice to Buyer as soon as practicable prior to any temporary or permanent change to the performance, operating characteristics, or major generation components (such as turbines, generators, inverters or similar equipment, as applicable) of the Generating Facility. Such notice shall describe any changes, expected or otherwise, to the total capacity of the Generating Facility, the rate of production and delivery of Net Energy, interconnection and transmission issues and any additional information requested by Buyer.

12.4 Project Reports and Project Review Meetings.

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

12.4.2 After Commercial Operation Date. After the Commercial Operation Date, Supplier shall provide to Buyer within thirty (30) days of the end of each calendar quarter throughout the Term of this Agreement, in electronic format, a report which shall include all pertinent information in connection with the Generating Facility, including: all weather data from any collection device measuring data with respect to the Generating Facility (such as a met tower or similar measurement device); any available site condition reports; all reporting information maintained in the operational log; and any reports pertaining to the Generating Facility fuel source or resource and such other data and reports as may be reasonably requested by Buyer and which should be maintained by Supplier in accordance with Good Utility Practice for the relevant technology. Upon written request by Buyer, Supplier shall provide to Buyer, in electronic format, any SCADA data from the Generating Facility.

12.4.3 Operations Log. Supplier shall maintain in accordance with Good Utility Practice an operations log, which shall include: (a) all planned and unplanned outages, alarms, circuit breaker trip operations, partial deratings of equipment, mechanical impairments defects or unavailability with respect to generating equipment; (b) the cause (including any root cause analysis undertaken) and remediation undertaken by Supplier with respect to the events listed in (a); (c) the Delivered Amounts for the Stub Period

and each Contract Year, and (d) any other significant event or information related to the operation of the Generating Facility or the delivery of Net Energy. The operations logs shall be available for inspection by Buyer upon forty-eight (48) hours notice together with all data maintained by Supplier as support for such logs. Supplier shall be responsible for maintaining sufficient evidentiary support in order to document the information contained in such operation logs.

- 12.5 **Financial Information.** Within thirty (30) days of Buyer's written request, Supplier shall provide Buyer with copies of Supplier's most recent quarterly and annual financial statements, which financial statements shall be prepared in accordance with generally accepted accounting principles. Such information shall be marked confidential information and shall not be disclosed by Buyer without Supplier's prior written consent, except as required by Law or court order.
- 12.6 **Information to Governmental Authorities.** Supplier shall, promptly upon written request from Buyer, provide Buyer with data collected by Supplier related to the construction, operation and maintenance of the Generating Facility reasonably required by Buyer or an Affiliate thereof for reports to, and information requests from, any Governmental Authority, or any intervener or party in any rate case or regulatory proceeding of Buyer. In addition, Supplier shall provide to Buyer copies of all submittals to a Governmental Authority directed by Buyer and related to the operation of the Generating Facility with a certificate that the contents of the submittals are true and accurate to the best of Supplier's knowledge. Supplier shall use best efforts to provide this information to Buyer with sufficient advance notice to enable Buyer to review such information and meet any submission deadlines imposed by the requesting Governmental Authority.
- 12.7 If Buyer or one of its Affiliates determines that it may hold a variable interest in Supplier under the Accounting Standards Codification (ASC) 810, Consolidation of Variable Interest Entities, or requirements of Law, but it lacks the information necessary to make a definitive conclusion, Supplier hereby agrees to provide, upon Buyer's written request, sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under ASC 810 or requirements of Law. If Buyer or its Affiliate determines that, it holds such a variable interest in Supplier, Supplier hereby agrees to provide, upon Buyer's written request, sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 or Law. The information provided to Buyer under this Section 12.7 shall be restricted only to those employees or consultants of Buyer that have a need to know such information for the purposes of making the determinations addressed in this Section 12.7 and shall be treated as confidential information if at the time of disclosure Supplier provides written notice that the information is confidential information. Supplier shall have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information. Information provided pursuant to this Section 12.7 is subject to

Buyer's obligations to disclose such information pursuant to this Agreement and pursuant to any applicable requirements of Law.

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

13. COMMUNICATIONS

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

14. SCHEDULING NOTIFICATION

- 14.1 **Scheduling Notification.** Supplier shall provide to Buyer's Operating Representative notices containing information including Supplier's good faith daily and hourly forecast of the Delivered Amount, Planned Outages, Derating, other outages and similar changes that may affect the Delivered Amount, in accordance with the Availability Notice procedures in Section 14.2.
- 14.2 **Availability Notice Procedures.**
- 14.2.1 No later than 05:00 PPT each day or as otherwise specified by Buyer consistent with Good Utility Practice, Supplier shall deliver to Buyer's Operating Representative an Availability Notice in the form set forth in Exhibit 8. The Availability Notice will cover WECC scheduling practices for day-ahead energy or such other period specified by Buyer consistent with Good Utility Practice.
- 14.2.2 Supplier shall update the Availability Notice and notify Buyer's Operating Representative as soon as practical after becoming aware of (a) an expected Derating by more than 5 MW or (b) an expected increase of Delivered Amount by more than 5 MW.
- 14.2.3 The information in the Availability Notice, including the forecasted Delivered Amount, will be Supplier's good faith forecast and will indicate any Delivery Hour for which the Delivered Amount is expected to be less than the Supply Amount or any Delivery Hour for which Excess Energy is expected.
- 14.2.4 In the event of a Derating, Supplier shall provide: (a) the extent, if any, to which the Derating is attributable to a Planned Outage; (b) the magnitude of the Derating; (c) the hours during which the Derating is expected to apply; and (d) the cause of the Derating.

15. COMPLIANCE

- 15.1 **Laws.** Each Party shall comply with all relevant Laws (including but not limited to compliance 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, except to the extent excused pursuant to Section 3.5), and shall, at its sole expense, maintain in full force and effect all relevant Permits material to the maintenance of its facilities and the performance of obligations under this Agreement. 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 **Coordination with System.** Supplier shall be responsible for the coordination and synchronization of the Generating Facility and the Interconnection Facilities with the Transmission System, and 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.
- 15.4 **Transmission Provider Consent.** Supplier shall execute a consent, in form required by Transmission Provider, to provide that Buyer can read the meter and receive any and all data from the Transmission Provider relating to transmission of Energy or other matters relating to the Generating Facility without the need for further consent from Supplier.

16. APPROVALS

- 16.1 **Condition Precedent.** Unless Buyer waives its right to terminate this Agreement pursuant to Section 16.3, each Party's performance of its respective obligations under Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of this Agreement is subject to Buyer obtaining the PUCN Approval described in Section 16.2 before the PUCN Approval Deadline and in form and substance satisfactory to Buyer in its sole discretion.
- 16.2 **PUCN Approval.** Within one hundred twenty (120) days after the Effective Date and in accordance with the requirements of Law, Buyer shall submit this Agreement to the PUCN for approval ("PUCN Approval") consisting of:
 - 16.2.1 A determination that the terms and conditions of this Agreement are just and reasonable; and
 - 16.2.2 A determination that the costs of purchasing Product under this Agreement are prudently incurred and that the Buyer may recover all just and reasonable costs of Product purchased under this Agreement.
- 16.3 **Failure to Obtain Approval; Conditions of Approval.** If the PUCN fails to grant the PUCN Approval on or before the PUCN Approval Deadline, including all items provided in Section 16.2, then Buyer shall have the right to terminate this Agreement within thirty (30) days after such PUCN Approval Deadline and upon ten (10) Business Days written notice to Supplier. If PUCN grants the PUCN Approval and the conditions of such approval are not acceptable to Buyer in its sole discretion, then Buyer shall have the right to terminate this Agreement within thirty (30) days of such PUCN Approval and upon written notice to Supplier.
- 16.4 **Cooperation.** If requested by Buyer, Supplier shall cooperate with Buyer as Buyer may deem necessary in order to obtain any regulatory approval (including PUCN Approval and any FERC approval) in connection with this Agreement, including

providing affidavits, providing timely responses to data requests of such regulatory bodies, intervening in any relevant dockets, and requesting “commenter” or “intervener” status in any relevant docket. Each Party agrees to notify the other Party of any significant developments in obtaining any approval in connection with achieving Commercial Operation of the Generating Facility, including the PUCN Approval. Each Party shall use reasonable efforts to obtain such required approvals and shall exercise due diligence and shall act in good faith to cooperate with and assist each other in acquiring each approval necessary to effectuate this Agreement.

17. SECURITY

- 17.1 **Development Security.** As a condition of Buyer’s execution of and continuing obligations under this Agreement, Supplier shall provide to Buyer, as security for the performance of Supplier’s obligations hereunder, either (a) a letter of credit from a Qualified Financial Institution in the form attached hereto as Exhibit 17 or (b) a cash deposit, in either case, in an amount equal to one million, five hundred thousand and 00/100 U.S. Dollars (\$1,500,000.00) (the “Development Security”). The Development Security shall be posted within five (5) Business Days after the Effective Date. Upon the PUCN Approval Date the Development Security shall increase to an amount equal to six million and 00/100 U.S. Dollars (\$6,000,000.00). The revised Development Security shall be posted within five (5) Business Days after the PUCN Approval Date. Buyer shall have the right to draw upon the Development Security, at Buyer’s sole discretion, (1) as a non-exclusive remedy available to Buyer under Article 24, (2) in the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline, (3) if Supplier fails to make any payments owing under this Agreement, or (4) if Supplier fails to reimburse Buyer for costs, including Replacement Costs, PC Replacement Costs and Penalties, that Buyer has incurred or may incur as a result of Supplier’s failure to perform its obligations under this Agreement. Any such drawing on the Development Security by Buyer (except for a drawing in full for Supplier’s failure to achieve Commercial Operation by the Commercial Operation Date that results in termination of this Agreement) shall give rise to an obligation of Supplier to replenish the Development Security to its required amount within two (2) Business Days of the drawing. In the event that no amounts are due and owing by Supplier to Buyer under this Agreement and Supplier has provided the Operating Security to Buyer, the Development Security shall be released to Supplier upon the earlier of (x) termination of this Agreement in accordance with its terms or (y) on the fifteenth (15th) Business Day after the Generating Facility achieves Commercial Operation. With the consent of Buyer, Supplier may apply and maintain the Development Security as a portion of Operating Security required to be provided by Supplier pursuant to Section 17.2.
- 17.2 **Operating Security.** As a condition to achieving Commercial Operation, Supplier shall provide to Buyer, as security for the performance of Supplier’s obligations hereunder, either (a) a letter of credit from a Qualified Financial Institution in the form attached hereto as Exhibit 17 or (b) a cash deposit, in either case, in an amount equal to eleven million, nine hundred twelve thousand, six hundred and

00/100 U.S. Dollars (\$11,912,600.00) or (c) a Guaranty substantially in the form of Exhibit 20 if the guarantor meets Buyer's minimum credit requirements as determined by Buyer in its sole and absolute discretion (the "Operating Security"). The Operating Security shall be posted no later than five (5) Business Days prior to the Commercial Operation Date. Buyer shall have the right to draw upon the Operating Security, at Buyer's sole discretion, (1) as a non-exclusive remedy available to Buyer in the event this Agreement is terminated under Article 24, (2) in the event Supplier fails to make any payments owing under this Agreement or (3) if Supplier fails to reimburse Buyer for costs, including Replacement Costs, PC Replacement Costs and Penalties that Buyer has incurred or may incur as a result of Supplier's failure to perform under this Agreement. Any such drawing on the Operating Security by Buyer shall give rise to an obligation of Supplier to replenish the Operating Security to its original amount within two (2) Business Days. In the event that no amounts are due and owing by Supplier to Buyer under this Agreement, the Operating Security shall be released to Supplier upon the fifteenth (15th) Business Day after (x) termination of this Agreement in accordance with its terms or (y) the expiration of the Term.

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

requirements as determined by Buyer in its sole and absolute discretion, then Buyer shall notify Supplier in writing and Supplier shall cause a letter of credit or cash in the amount of the Operating Security to be delivered to Buyer within five (5) Business Days of such notice. Failure to provide the Operating Security in a timely manner shall constitute an Event of Default pursuant to Article 24.

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

18. INDEMNIFICATION

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

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

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

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

18.3 **Indemnification Procedures.**

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

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

18.3.2.1 May result in injunctions or other equitable remedies with respect to the Indemnified Party which would affect its business or operations in any materially adverse manner,

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

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

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

19. LIMITATION OF LIABILITY

19.1 Responsibility for Damages. Except where caused by the other Party's negligence or willful misconduct, each Party shall be responsible for all physical damage to or destruction of the property, equipment and/or facilities owned by it, and each Party hereby releases the other Party from any reimbursement for such damage or destruction.

19.2 Limitation on Damages. To the fullest extent permitted by Law and notwithstanding other provisions of this Agreement, except for Replacement Costs, PC Replacement Costs or payment made by either Party to satisfy Penalties or payments owing under Sections 3.7, 3.8, 7.5, 8.4, 8.5, 15.1, 17.1, 17.2, 18.1, 19.1, 21.4, 27.1, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement (unless due to the willful or intentional breach of this Agreement by such Party, in which case the limitation shall not apply). In addition, this limitation on damages shall not apply with respect to claims brought

by third parties for which a Party is entitled to indemnification under this Agreement.

- 19.3 **Survival**. The provisions of this Article 19 shall survive any termination, cancellation, expiration, or suspension of this Agreement.

20. FORCE MAJEURE

- 20.1 **Excuse**. Subject to Section 20.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product) if such delay or failure is due to an event of Force Majeure.
- 20.2 **Definition**. “Force Majeure” or “an event of Force Majeure” means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party’s negligence or failure to act, and (d) could not be overcome by the affected Party’s use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; civil disturbance; sabotage; strikes; lock-outs; work stoppages; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action).
- 20.3 **Exclusions**. Notwithstanding the foregoing, none of the following constitute Force Majeure:
- 20.3.1 Economic hardship of either Party, including lack of money;
 - 20.3.2 The non-availability or reduced availability of the resource supply to generate electricity from the Generating Facility, including due to weather, high or low temperatures or climate conditions;
 - 20.3.3 A Party’s failure to obtain any permit, license, consent, agreement or other approval from a Governmental Authority, except to the extent it is caused by an act of God or civil disturbance; and
 - 20.3.4 A Party’s failure to meet a Project Milestone, except to the extent it is caused by an event listed in Section 20.2.
 - 20.3.5 Breakdown or malfunction of equipment at the Generating Facility that is not caused by an independent event of Force Majeure.
 - 20.3.6 The imposition of costs or Taxes on a Party.

- 20.3.7 Maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving the Interconnection Facilities, whether performed by or for Supplier, or other third parties (except for repairs made necessary as a result of an event of Force Majeure).
 - 20.3.8 Supplier's failure to obtain, or perform under, the IA, or its other contracts and obligations to transmission owner, Transmission Provider unless due to a Force Majeure event.
 - 20.3.9 Supplier's ability to sell, or Buyer's ability to purchase energy or capacity at a more advantageous price than is provided hereunder.
 - 20.3.10 The cost or availability of fuel or motive force to operate the Generating Facility.
 - 20.3.11 Any breakdown or malfunction of the Generating Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure
 - 20.3.12 The imposition upon a Party of costs or Taxes allocated to such Party under Article 5.
 - 20.3.13 Delay or failure of Supplier to obtain or perform any Required Facility Document unless due to a Force Majeure event.
 - 20.3.14 Any delay, alleged breach of contract, or failure by the Transmission Provider unless due to a Force Majeure event.
 - 20.3.15 Maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving the Interconnection Facilities, whether performed by or for Supplier, or other third parties (except for repairs made necessary as a result of an event of Force Majeure).
 - 20.3.16 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.
 - 20.3.17 Any event attributable to the use by Supplier of Interconnection Facilities for deliveries of Net Energy to any party other than Buyer.
 - 20.3.18 Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, steel, labor, or transportation constitute an event of Force Majeure.
- 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;
- 20.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;
- 20.4.3 Expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem (subject to the provisions of Section 2.3.4); provided, however, that nothing herein requires a Party to settle a strike or other labor dispute;
- 20.4.4 Exercises all reasonable efforts to mitigate or limit damages to the other Party; and
- 20.4.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

21. DISPUTES

- 21.1 **Dispute or Claim**. Any cause of action, claim or dispute which either Party may have against the other arising out of or relating to this Agreement, including, but not limited to, the interpretation of the terms hereof or any Laws or regulations that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof ("Dispute") shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.
- 21.2 **Good Faith Resolution**. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.
- 21.3 **Informal Negotiation**. The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the Operating Representatives or Contract Representatives and senior management of each Party.
- 21.4 **Jurisdiction, Venue**. Each Party hereto irrevocably (a) submits to the exclusive jurisdiction of the federal and state courts located in the County of Clark, State of Nevada; (b) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (c) waives any claim that such proceedings have been brought in an inconvenient forum.
- 21.5 **Recovery of Costs and Attorneys' Fees**. In the event of a Dispute arising from or relating to this Agreement, whether or not an action is commenced in any court to enforce any provision or for damages by reason of any alleged breach of this

Agreement, then the prevailing Party will be entitled to recover from the other Party all costs and attorneys' fees reasonably incurred in resolving the Dispute. For purposes hereof, the "prevailing" Party need not prevail on every issue involved in the Dispute, but only on the main issue giving rise to the Dispute.

- 21.6 **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

22. NATURE OF OBLIGATIONS

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

23. ASSIGNMENT

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

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

23.1.2 Subject to receiving the consent of Supplier, such consent not to be unreasonably withheld, conditioned or delayed, Buyer also may assign this Agreement, in whole or in part, to a Person whose Credit Rating, as published by either Relevant Rating Agency, is equal or superior to the Minimum Credit Rating as of the time of assignment.

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

23.2 **Supplier Assignment.** Supplier may, without the consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer (and without relieving itself from liability hereunder) (a) transfer, pledge, encumber or assign this Agreement or the account, revenues or proceeds hereof to a Supplier's Lender in connection with any financing or other financial arrangements for the Generating Facility with Supplier's Lenders. Any pledge of this Agreement as collateral security will not relieve Supplier of any obligation or liability under this Agreement, and it will not create any rights, including any third party beneficiary rights, for any person under this Agreement. Supplier may, without the consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer (and without relieving itself from liability hereunder) transfer or assign this Agreement to any Affiliates of First Solar, Inc. in connection with a transfer of the Generating Facility to such Affiliate; provided, that (i) the creditworthiness of such Affiliate is equal to or superior to the creditworthiness of Supplier as of the Effective Date, as determined by Buyer in its reasonable discretion, (ii) such Affiliate enters into an assignment and assumption agreement, in form and substance satisfactory to Buyer, pursuant to which such Affiliate assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement and (iii) if the transfer or assignment is to an Affiliate of First Solar, Inc., such Affiliate is a Qualified Transferee. Supplier agrees that it will provide written notice to Buyer (and, if required, the PUCN Regulatory Operations Staff, and the State of Nevada Attorney General's Bureau of Consumer Protection) of any assignment of this Agreement by Supplier, together with information supporting the permissible nature of the assignment, prior to the effective date of any such assignment.

23.3 **Liability After Assignment.** A Party's assignment or transfer of rights or obligations pursuant to this Article 23 (other than Section 23.2) of this Agreement shall relieve said Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment, provided such transferee enters into an assignment and assumption agreement, in form and substance satisfactory to the other Party, pursuant to which such transferee assumes all of the assigning or transferring Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.

23.4 **Transfers of Ownership.** Subject to the provisions of Article 6, Supplier shall not sell, transfer, assign or otherwise dispose of its ownership interest in the Generating Facility to any third party absent (a) a transfer of this Agreement to such third party, (b) Supplier entering into an assignment and assumption

agreement, in form and substance reasonably satisfactory to Buyer, with such third party pursuant to which such third party assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement, and (c) Buyer's prior written approval, not to be unreasonably withheld, conditioned or delayed, of such third party. Without limiting the foregoing, any such sale, transfer, assignment or disposal shall be to a Qualified Transferee. Except as provided in Article 6, this Section 23.4 shall not apply or restrict any sale, transfer, assignment or disposal of the Generating Facility (i) to an Affiliate of Supplier so long as the requirements for the assignment of the Agreement to an Affiliate in Section 23.2 are satisfied, or (ii) pursuant to a Financing.

- 23.5 **Controlling Interest.** Subject to the provisions of Article 6, no Controlling Interest in Supplier may be sold, transferred or assigned (whether through a single transaction or a series of transactions over time) without Buyer's prior written approval, not to be unreasonably withheld, of the transferee with respect to such Controlling Interest. Without limiting the foregoing, any such sale, transfer, or assignment must be to a Qualified Transferee. This Section 23.5 shall not apply or restrict any sale, transfer, assignment of a Controlling Interest in Supplier (i) to an Affiliate of First Solar, Inc. so long as the requirements for the assignment of the Agreement to an Affiliate in Section 23.2 are satisfied, or (ii) pursuant to a Financing.
- 23.6 **Assignee Obligations.** Supplier shall procure and deliver to Buyer an undertaking, enforceable by Buyer, from each party possessing a security interest in the Generating Facility to the effect that, if such party forecloses on its security interest, (a) it will assume Supplier's obligations under and otherwise be bound by the terms of this Agreement, and (b) it will not sell, transfer or otherwise dispose of its interest in the Generating Facility to any third party absent an agreement from such third party to assume Supplier's obligations under and otherwise be bound by the terms of this Agreement.
- 23.7 **Successors and Assigns.** This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective permitted successors and permitted assigns.
- 23.8 **Collateral Assignment by Supplier.** Whenever Supplier intends to transfer, pledge, encumber or collaterally assign this Agreement to Supplier's Lenders, Supplier shall provide written notice to Buyer of such intended transfer, pledge, encumbrance or assignment, including the address of Supplier's Lenders. Buyer agrees to enter into a Lenders Consent in the form of Exhibit 19 with 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.

24. DEFAULT AND REMEDIES

- 24.1 **Events of Default.** An event of default ("**Event of Default**") shall be deemed to have occurred with respect to a Party (the "**Defaulting Party**") upon the occurrence of one or more of the following events:
- 24.1.1 failure to comply with any material obligations imposed upon it by this Agreement or failure of any representation or warranty of a Party to be true in any material respect for which an Event of Default is not otherwise provided in this Section 24;
 - 24.1.2 failure to make timely payments due under this Agreement;
 - 24.1.3 failure to comply with the material requirements of any Electric System Authority, Transmission Provider or any Governmental Authority;
 - 24.1.4 in the case of Supplier, its failure at any time to qualify and maintain, subject to Section 3.5, the Generating Facility as a Renewable Energy System.
 - 24.1.5 in the case of Supplier, its failure to install, operate, maintain or repair the Generating Facility in accordance with Good Utility Practice;
 - 24.1.6 in the case of Supplier, its failure to timely complete any of the Critical Project Milestones (including Commercial Operation) before the scheduled date and as set forth in Exhibit 6, unless excused by an event of Force Majeure, and, in the case of Commercial Operation, 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; and
 - 24.1.10 in the case of Supplier, if Supplier (a) becomes insolvent, files for or is forced into bankruptcy (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) days), (b) makes an assignment for the benefit of creditors, (c) is unable to pay its debts as they become due or (d) is subject to a similar action or proceeding (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) days).
 - 24.1.11 in the case of Supplier, if Supplier (a) relinquished all possession and control of the Generating Facility, other than pursuant to a transfer permitted under this Agreement, or (b) after commencement of the

construction, testing, and inspection of the Generating Facility, and prior to the Commercial Operation Date, completely ceases construction, testing, and inspection of the Generating Facility for ninety (90) consecutive days, if not attributable to an Event of Default of, or request by Buyer, or an event of Force Majeure.

- 24.2 **Duty/Right to Mitigate.** Each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance. For the purpose of this Section 24.2, commercially reasonable efforts by Supplier shall include maximizing the price for Product received by Supplier from third parties to the extent permitted by Law and the IA, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Product not purchased or accepted by Buyer during a period Buyer is in default.
- 24.3 **Cure Period.** An Event of Default shall not be deemed to have occurred under Section 24.1, other than pursuant to Sections 24.1.6, or Section 24.1.10, unless and until the Defaulting Party shall have had a period of (a) ten (10) Business Days from the date the applicable payment was due, in the case of Section 24.1.2, and (b) thirty (30) days from the date of receipt of written notice of the occurrence of any of the events described in Section 24.1 (other than Sections 24.1.2, 24.1.6, 24.1.7 or 24.1.10) (the "Cure Period") to cure such potential Event of Default.
- 24.4 **Remedies.** If an Event of Default is not cured by the Defaulting Party during the Cure Period, the Non-Defaulting Party shall be entitled to all legal and equitable remedies that are not expressly prohibited by the terms of this Agreement, including termination of this Agreement as provided in Section 2.3, payment of damages, and, in the case of Buyer, drawing upon the Development Security and the Operating Security as provided in Article 17.
- 24.5 **Termination of Duty to Buy.** If this Agreement is terminated because of a default by Supplier, neither Supplier nor Affiliate of Supplier, nor any successor to Supplier with respect to the ownership of the Generating Facility or the Project Site, may thereafter require or seek to require Buyer to make any purchases from the Generating Facility or any electric generation facility constructed on the Project Site, under Public Utility Regulatory Policies Act of 1978 or any other Law, for any periods that would have been within the Term had this Agreement remained in effect. Supplier, on behalf of itself and any other entity on whose behalf it may act, hereby waives its rights to require Buyer so to do.
- 24.5.1 **Right of First Offer for Generating Facility Product.** In the event of any termination hereof by Buyer in accordance with this Agreement after the Commercial Operation Date, in addition to Buyer's rights to collect Delay Damages and its remedies under the Development Security and the Operating Security, Buyer shall have a right of first offer (the "Output Right of First Offer") on the Product of any generation facility (a "Covered Facility") that from time to time may be constructed by Supplier

or any Affiliate of Supplier on the Project Site in an amount equal to the Supply Amount at the Product Rate. The Output Right of First Offer shall be exercisable by Buyer through the third (3rd) anniversary date of Buyer's notice of termination. Supplier shall provide Buyer with no less than twelve (12) months' prior written notice of the anticipated commercial operation date for any of a Covered Facility and not previously subject to Buyer's Output Right of First Offer. Buyer shall notify Supplier within sixty (60) days as to whether Buyer elects to purchase such Product. If Buyer elects to purchase such Product, the same shall be sold to Buyer for the Product Rate that would have applied to Product purchased by Buyer hereunder had this Agreement remained in effect, at the rates and for the periods indicated in this Agreement.

24.6 Step-In Rights.

24.6.1 Failure to Achieve Commercial Operation. If Supplier fails to achieve Commercial Operation of the Generating Facility within two hundred forty (240) days of the Commercial Operation Deadline and Buyer has not terminated this Agreement, without limiting its other rights hereunder, Buyer shall have the right to enter the Generating Facility and do all such things as Buyer may consider necessary or desirable to complete the Generating Facility and cause Commercial Operation to occur. Buyer shall following the Commercial Operation Date (a) return the Generating Facility to Supplier upon execution of an indemnity and release by Supplier of all claims arising out of the period of Buyer's entry on the Generating Facility in a form reasonably acceptable to Buyer, except that, notwithstanding 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 24.6.1 to complete the Generating Facility and cause Commercial Operation to occur; provided, however, that Buyer's efforts to repair the Generating Facility shall not be considered spoliation of evidence in any claim by Supplier for indemnification under this Section 24.6.1, or (b) failing the execution of such release or indemnity, (i) operate the Generating Facility for the Term pursuant to the license granted in Section 24.6.2 or (ii) terminate this Agreement without payment of any damages by Buyer.

24.6.2 License to Operate Facility. Supplier hereby irrevocably grants to Buyer the right, license, and authority to enter the Project Site, operate the Generating Facility for the Term during the continuance of an Event of Default by Supplier after the applicable Cure Period (if any) in Section 24.3 has expired. During any period in which Buyer is operating the Generating Facility pursuant to the license granted in this Section 24.6.2, Buyer will continue to accrue payments in accordance with the terms of this Agreement for Product delivered during such period net of Buyer's 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 operate and maintain the Generating Facility. Within ten (10) days following Supplier's cure of the Event of Default giving rise to Buyer's rights under this Section 24.6.2, Buyer shall return possession of the Generating Facility to Supplier. 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 Generating Facility all documents, contracts, books, manuals, reports, and records required to construct, operate and maintain the Generating Facility in accordance with Good Utility Practice. 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. 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. Upon Buyer's notice of intent to exercise its rights under this Section 24.6, Buyer, its employees, contractors, or designated third parties shall have the right to enter the Project Site and the Generating Facility for the purpose of constructing or operating the Generating Facility. Upon the exercise by Buyer of its rights under this Section 24.6, Supplier shall cause the Generating Facility operator (and any Person within the control of Supplier) to give Buyer access to and control of the operation and maintenance of the Generating Facility to the extent reasonably necessary to enable Buyer to exercise its rights under this Section 24.6 in respect of the part of the Generating Facility to be operated by Buyer, and shall provide reasonable assistance and cooperation to Buyer to effect safely the transfer of operational responsibility as may be requested by Buyer. Supplier shall execute such documents and take such other action as may be necessary for Buyer to effectuate its rights under this Section 24.6.
- 24.6.4 **Return.** Buyer may, at any time, terminate its exercise of its rights under this Section 24.6 whether or not the applicable Event of Default has been cured. If at any time after exercising its rights under this Agreement, Buyer elects to return possession of the Generating Facility to Supplier, Buyer shall provide Supplier with at least ten (10) days advance notice of the date Buyer intends to return such possession, and upon receipt of such notice Supplier shall take all measures necessary to resume possession of the Generating Facility on such date.
- 24.6.5 **No Assumption.** Buyer's exercise of its rights under this Section 24.6 shall not be deemed an assumption by Buyer of any liability of Supplier due and owing prior to the exercise of such rights. Buyer shall not assume

any liability of Supplier for the period during which Buyer exercises its rights under this Section 24.6. During any period that Buyer is exercising its rights, Supplier shall retain legal title to and ownership of the Generating Facility and all of its other property and its revenues. When exercising its rights under this Section 24.6, Buyer shall assume possession, operation, and control of the Generating Facility solely as agent for Supplier. In no event shall Buyer's election to exercise its rights under this Section 24.6 be deemed to constitute a transfer of ownership of or title to the Generating Facility or any assets of Supplier.

- 24.6.6 **Costs and Expenses.** Except as otherwise provided in this Section 24.6, Supplier shall indemnify and hold harmless Buyer from and against all Losses incurred by Buyer in connection with exercise of its rights under this Section 24.6 other than due to the gross negligence or willful misconduct of Buyer. In connection with its exercise of its rights under this Section 24.6, Buyer shall have the right to recoup and set off all such Losses against amounts otherwise owed by Buyer hereunder. Buyer's exercise of such recoupment and set off rights shall not limit the other remedies available to Buyer hereunder or otherwise. Supplier shall not be liable for any Replacement Costs under Section 3.7 or PC Replacement Costs under Section 3.8 during any period that Buyer is operating the Generating Facility pursuant to this Section 24.6.

25. REPRESENTATIONS AND WARRANTIES OF SUPPLIER

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

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

enforcement of rights generally. Supplier is an “eligible contract participant” as that term is defined in the United States Commodity Exchange Act.

- 25.3 **Consents and Approvals: No Violation.** Other than obtaining the Supplier’s Required Regulatory Approvals as set out in Exhibit 10 and the Required Facility Documents as set out in Exhibit 12, the execution, delivery and performance of this Agreement by Supplier shall not (a) conflict with or result in any breach of any provision of the articles of organization (and/or other governing documents) of Supplier; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained .
- 25.4 **Regulation as a Utility.** Except as set forth in Exhibit 10, Supplier is not subject to regulation as a public utility or public service company (or similar designation) by the United States, any State of the United States, any foreign country or any municipality or any political subdivision of the foregoing.
- 25.5 **Availability of Funds.** Supplier has, or will have, and shall maintain sufficient funds available to it to perform all obligations under this Agreement and to consummate the obligations contemplated pursuant thereto.
- 25.6 **Interconnection Process: Transmission.** Supplier or an Affiliate of Supplier has initiated with the Transmission Provider the process of obtaining the rights to interconnect the Generating Facility to the Transmission System in order to provide for the delivery of Net Energy to and at the Delivery Point.
- 25.7 **Interconnection Cost Due Diligence.** Supplier has conducted due diligence regarding the costs of all facilities necessary to interconnect the Generating Facility to and at the Delivery Point and all such costs are covered by the Product Rate depicted in Exhibit 2A.
- 25.8 **Required Facility Documents.** All Required Facility Documents are listed on Exhibit 12. Pursuant to the Required Facility Documents, Supplier holds as of the Effective Date, or will hold by the Commercial Operation Date (or such other later date as may be specified under requirements of Law), and will maintain for the Term all Required Facility Documents (including, but not limited to, all material authorizations, rights and entitlements) necessary to construct, own and operate the Facility and to deliver Net Energy to Buyer in accordance with this Agreement. The anticipated use of the Generating Facility complies with all applicable restrictive covenants affecting the Generating Facility or the Project

Site. Following the Commercial Operation Date, Supplier shall notify Buyer of any additional material consent or approval that is required for the operation and maintenance of the Facility promptly after Supplier makes any such determination.

- 25.9 Permits, Authorizations, Licenses, Grants, etc. Supplier has applied or will apply for or has received the permits, authorizations, licenses and grants listed in Exhibits 10 and 12, and that, as of the Effective Date, no other permits, authorizations, licenses or grants are required by Supplier to construct and operate the Generating Facility or fulfill its obligations under this Agreement.
- 25.10 Related Agreements. Supplier has entered into or will enter into all necessary and material agreements as listed in Exhibit 12 related to Supplier's obligations under this Agreement.
- 25.11 Certification. 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 Generating Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third party.
- 25.13 Project Site. Supplier either (a) owns the real property comprising the Project Site or (b) has obtained or will obtain the necessary Real Property Rights to construct and operate the Generating Facility on the Project Site throughout the Term.
- 25.14 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Article 25 are made as of the Effective Date and deemed repeated as of the Commercial Operation Date. If at any time during the Term, Supplier obtains actual knowledge of any event or information that would have caused any of the representations and warranties in this Article 25 to be materially untrue or misleading at the time given, Supplier shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which Supplier intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 25.14 shall be given as soon as practicable after the occurrence of each such event.

26. REPRESENTATIONS AND WARRANTIES OF BUYER

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

- 26.1 **Organization: Qualification.** Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Nevada and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business as a corporation and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.
- 26.2 **Authority Relative to this Agreement.** Buyer has full corporate authority to execute and deliver this Agreement to which it is a party and to consummate the transactions contemplated herein. The execution and delivery of this Agreement has been duly and validly authorized by Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.
- 26.3 **Consents and Approvals: No Violation.** Other than obtaining Buyer's Required Regulatory Approvals as set out in Exhibit 9, the execution, delivery and performance of this Agreement by Buyer shall not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except (i) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (ii) for those consents, authorizations, approvals, permits, filings and notices which become applicable to Buyer as a result of specific regulatory status of Buyer or as a result of any other facts that specifically relate to the business or activities in which Buyer is or proposes to be engaged, which consents, approvals, authorizations, permits, filings and notices have been obtained or made by Buyer; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 26.4 **Continuing Nature of Representations and Warranties: Notice.** The representations and warranties set forth in this Article 26 are made as of the Effective Date and deemed repeated as of the Commercial Operation Date. If at any time during the Term, a Party obtains actual knowledge of any event or information that would have caused any of the representations and warranties to be materially untrue or misleading at the time given, such Party shall provide the other Party with prompt written notice of the event or information, the

representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct.

27. INSURANCE

- 27.1 General Requirements.** Supplier shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations and facilities in the manner and amounts set forth herein from the Effective Date of this Agreement. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If any policy is maintained on a "claims made" form and is converted to an "occurrence form," the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer. Supplier shall provide Buyer and any additional insureds thirty (30) days prior written notice of the cancellation of any required insurance coverage. Supplier shall provide Buyer and any additional insureds written notice of any material change in coverage as soon as practicable following notification of the same by the insurance provider.
- 27.2 Qualified Insurers.** Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Nevada and with the equivalent, on a continuous basis, of an "A.M. Best Company Rating" of "A" or better and shall include provisions or endorsements:
- 27.2.1** Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;
 - 27.2.2** Providing Buyer with subrogation waivers on all coverage;
 - 27.2.3** Providing for Separation of Insured coverage in the general liability and auto liability insurance policies; and
 - 27.2.4** Naming Buyer as an additional insured on the general liability and auto liability insurance policies of Supplier as its interests may appear with respect to this Agreement.
- 27.3 Certificates of Insurance.** Within thirty (30) days of the Effective Date, Supplier shall provide to Buyer, and shall continue to provide to Buyer within thirty (30) days prior to the expiration of the policy until the expiration of this Agreement, upon any change in coverage, or at the request of Buyer not to exceed once each year, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance shall provide the following information:
- 27.3.1** The name of insurance company, policy number and expiration date; and

- 27.3.2 The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of Supplier maintaining such policy.
- 27.4 **Certified Copies of Insurance Policies.** At Buyer's request, in addition to the foregoing certifications, Supplier shall deliver to Buyer a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company.
- 27.5 **Inspection of Insurance Policies.** Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.
- 27.6 **Supplier's Minimum Insurance Requirements.**
- 27.6.1 **Worker's Compensation.** Workers' compensation insurance in the form and manner required by statutory requirements and endorsement providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable. Employer's liability insurance with the following limits: (1) one million dollars (\$1,000,000.00) per each bodily injury by accident; (2) one million dollars (\$1,000,000.00) per each employee bodily injury by occupational disease; and (3) one million dollars (\$1,000,000.00) in the annual aggregate per each bodily injury by occupational disease.
- 27.6.2 **General Liability.** General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of at least five million dollars (\$5,000,000) per occurrence and at least five million dollars (\$5,000,000) annual aggregate.
- 27.6.3 **Automobile Liability.** Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage with a combined single limit of at least two million dollars (\$2,000,000).
- 27.6.4 **Failure to Comply.** If Supplier fails to comply with the provisions of this Article 27, Supplier shall save harmless and indemnify Buyer from any direct or indirect Loss, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Article 27, in accordance with the indemnification provisions of Article 18.

28. NO EXPECTATION OF CONFIDENTIALITY; PUBLIC STATEMENTS

- 28.1 **No Expectation of Confidentiality.** Supplier has no expectation that any of the terms of this Agreement will be treated as confidential by Buyer, and Buyer has

no obligation to seek confidential treatment of this Agreement in connection with Buyer's Regulatory Approvals or otherwise.

- 28.2 **Public Statements.** The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement and Supplier shall not issue any such public announcement, statement or other disclosure without having first received the written consent of Buyer, except as may be required by Law. Notwithstanding the foregoing, Supplier acknowledges and agrees that Buyer may advertise, issue brochures or make other announcements, publications or releases regarding this Agreement and the Generating Facility for educational, promotional or informational purposes. Supplier shall reasonably cooperate with Buyer regarding such activities, including providing Buyer with reasonable access to the Generating Facility and authorizing the use of pictures of the Generating Facility for such activities. It shall not be deemed a violation of this Section 28.2 to file this Agreement with the PUCN or FERC or any other Governmental Authority in connection with Buyer's Regulatory Approvals or otherwise.

29. MISCELLANEOUS

29.1 Notices.

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

shall be sent either by registered or certified U.S. mail (postage paid return receipt requested), or overnight courier delivery or electronic mail. If any such notice is sent via electronic mail, then a copy of such notice shall also be sent either by registered or certified U.S. mail (postage paid return receipt requested), or overnight courier delivery. Such notices or submittals will be effective upon receipt by the addressee; except that notices or submittals transmitted by electronic mail shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 16:00 PPT, and if transmitted after that time, on the following Business Day. If any notice sent by regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, overnight courier delivery is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

- 29.1.4 Any payments required to be made under this Agreement shall be made pursuant to the instructions in Exhibit 4, as such instructions may be changed by any Party from time to time by written notice.
- 29.2 **Merger.** This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter whether written or oral.
- 29.3 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.
- 29.4 **Rules of Construction: Interpretation.** Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity's or index's successors; (d) "herein," "hereof" and "hereunder" refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) "including" means "including, without limitation" or "including, but not limited to"; (h) all references to a particular Law or statute mean that Law or statute as amended from time to time; (i) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (j) the word "or" is not necessarily exclusive. Reference to "days" shall be calendar days, unless expressly stated otherwise herein. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or Law shall be deemed also to refer to

all rules and regulations promulgated thereunder, unless the context requires otherwise. References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement, unless otherwise stated.

- 29.5 **Headings and Titles.** The headings and section titles in this Agreement are for convenience of the Parties only and should not be used to construe this Agreement.
- 29.6 **Discontinued or Modified Index.** If any index publisher discontinues publishing or substantially modifies any index utilized herein, then the index used herein will be modified to the most appropriate available index, with appropriate adjustments to take into account any changes in the location of measurement.
- 29.7 **Severability.** If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable provisions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by Law.
- 29.8 **Waivers: Remedies Cumulative.** No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade, or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law.
- 29.9 **Amendments.** Amendments or modifications to this Agreement must be in writing and executed by an authorized representative of each Party. Buyer may determine that submitting an amendment to the PUCN and FERC, as applicable, for filing, acceptance or approval shall be a condition precedent to the effectiveness of any such amendment.
- 29.10 **Time is of the Essence.** Time is of the essence to this Agreement and in the performance of all of the covenants, obligations and conditions hereof.
- 29.11 **Choice of Law.** This Agreement and the rights and obligations of the Parties shall be construed and governed by the Laws of the State of Nevada, except for such Laws that would require the application of the Laws of another jurisdiction.

- 29.12 **Further Assurances.** The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement. Without limiting the foregoing, whenever revised or updated exhibits are delivered or generated hereunder for attachment to this Agreement, the Parties will memorialize in a reasonable written instrument, to be executed and delivered by both Parties.
- 29.13 **Forward Contract.** The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code.
- 29.14 **No Third-Party Beneficiaries.** Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.
- 29.15 **Mobile-Sierra.** Absent agreement of all Parties to a proposed modification of this Agreement, the standard of review the FERC shall apply when acting on proposed modifications to this Agreement, either on FERC’s own motion or on behalf of a signatory or a non-signatory, shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527, 128 S.Ct. 2733, 171 L.Ed.2d. 607 (2008) and *NRG Power Marketing, LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).
- 29.16 **Specific Performance.** Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of Supplier hereunder. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of the other Party hereunder, and that any liability limits contained herein shall not operate to limit the exercise of Buyer’s remedies in equity to cause Supplier to perform its obligations hereunder. Supplier agrees that it will not assert as a defense to Buyer’s action for specific performance of, or injunctive relief relating to, Buyer’s obligations hereunder that the amounts payable or paid by Supplier in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Supplier hereby conclusively waives such defense. Supplier shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets relating to the Generating Facility to

the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

29.17 Transmission Provider. The Parties acknowledge that as of the Effective Date, the Buyer and the Transmission Provider are the same legal entity, and further acknowledge that in accordance with FERC regulations relating to open-access transmission, Nevada Power Company's transmission function employees are required to function independently of Nevada Power Company's marketing function employees. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its progeny, and the associated implementing regulations. Moreover, the Parties acknowledge that Transmission Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Supplier will enter into the IA with the Transmission Provider. Accordingly, references herein to the "Transmission Provider" relate to Nevada Power Company in its capacity as the owner/operator of the Transmission System, and references to the "Buyer" herein relate to Nevada Power Company outside of and separate from its capacity as the owner/operator of the Transmission System. The IA shall be a separate agreement. This Agreement is not binding upon the Transmission Provider. Notwithstanding any other provision in this Agreement, nothing in the IA, nor any other agreement between Supplier on the one hand and Transmission Provider or Market Operator on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation under this Agreement. This Agreement shall not be construed to create any rights between Supplier and the Transmission Provider. Supplier acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over the Transmission Provider, and is not liable for any breach of agreement or duty by the Transmission Provider or Market Operator.

[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:

SUPPLIER:

NEVADA POWER COMPANY

PLAYA SOLAR 2, LLC

By: 
Name: Wade Gardner
Title: WESTPOINT JCOO

By: _____ 
Name:
Title:

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

By: _____
Name:
Title:

SUPPLIER:

PLAYA SOLAR 2, LLC

By:  _____
Name: Brian Kunz
Title: Vice President, Project Development



EXHIBIT 1

DESCRIPTION OF GENERATING FACILITY

1. Name of Facility: Playa Solar 2

(a) Location: Clark County, Nevada, US

(b) Delivery Point: The 230 kV Harry Allen Substation

2. Supplier: Playa Solar 2, LLC

3. Parent: First Solar, Inc.

4. Operator: First Solar Electric, LLC

5. Equipment:

(a) Type of Facility: Solar PV

(b) Installed Capacity (each unit):

(i) Total nameplate capacity: 110.16 MVA

(ii) Expected nameplate capacity rating: 104.652 MW AC @ 0.95 PF

(iii) Total gross output capacity: 104.652 MW AC

(iv) Expected Net Capacity Rating: 100 MW AC

(c) Additional Technology Specific Information:

(i) None

(d) Number of generating units: 1

(e) Nameplate of each generating unit: 110.16 MVA

6. Operating Characteristics (FERC Order 890)

(a) VAR, leading: 33 MVAR

(b) VAR, lagging (-): -33 MVAR

(c) Ramp Rate (MW/minute): 10

(d) Minimum Operating Capacity (MW): 10

(e) Power Factor: 0.95

7. Shared Facilities: Supplier will have a partial interest in the access roads, operations and maintenance buildings, and project substation, gen-tie line, and associated facilities and equipment required to deliver Net Energy to the Delivery Point.

EXHIBIT 2A

PRODUCT RATES

PRODUCT RATE

The Product Rate during the Stub Period (or, if there is no Stub Period because the Commercial Operation Date is January 1st, during the first Contract Year) shall be \$38.70 per MWh (the "Initial Product Rate"):

Thereafter, for the Term of the Agreement, the Product Rate shall be increased on January 1st of each Contract Year by an amount equal to three percent (3%) of the Product Rate for the previous Contract Year; (except that, solely with respect to the January 1st immediately following the Stub Period, such percentage shall be prorated as determined by the following formula:

Product Rate = Initial Product Rate * [1 + (3% * FCM/12)];

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

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE

Supplier Letterhead

Generating Facility: _____

Date: _____

Generating Facility ID: _____

Billing Period: _____

Invoice Number: _____

CURRENT MONTHLY BILLING DATA INPUT

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

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

Excused Product
Planned Outages _____
Force Majeure _____
Emergencies _____
Curtailed Product _____
Total Excused Product _____

Delivered Amount (kWh) **On-Peak**
Net Energy (excluding Excess Energy) _____
Excess Energy _____
Total Delivered Amount _____

CURRENT MONTHLY INVOICE CALCULATION

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

PAYMENT DUE DATE NO LATER THAN: _____

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE

REPLACEMENT COST CALCULATION – For Billing Period: September

Summer On-Peak

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

 e. Delivered Amount _____ kWh

 Shortfall (Y/N) ? _____

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

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

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

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

REPLACEMENT COST CALCULATION – For Billing Period: December

Non-Summer On-Peak

l. Total Supply Amount _____ kWh
 m. Excused Product _____ kWh
 n. Difference (l – m) _____ kWh
 o. 90% of Difference (0.90 * n) _____ kWh

 p. Delivered Amount _____ kWh

 q. Shortfall (Y/N) ? _____

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

 Replacement Cost Calculation
 s. Average Mead Index _____ \$/MWh
 t. Product Rate _____ \$/MWh
 u. Difference (max s – t or zero) _____ \$/MWh

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

 w. Total Replacement Cost \$ _____

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE DETAIL

Date	Hour Ending	On-Peak/ Off-Peak	Supply Amount	Total Delivered Amount	Base Product Amount	Product Rate	Base Product Cost	Excess Energy	Maximum Amount Energy	Enursed Product	Reason for Enursed
Total											
On-Peak											
Total											
Off-Peak											
Totals											

EXHIBIT 2C

FORM OF PC REPLACEMENT INVOICE

Buyer Letterhead

Generating Facility: _____
Generating Facility ID: _____

Date: _____
Contract Year(s): _____
Invoice Number: _____
Payment Due Date: _____

Contract Year Data	PCs
a. Yearly PC Amount	_____
b. Delivered PCs	_____
PCs associated with Excused Product	_____
c. Planned Outage	_____
d. Force Majeure	_____
e. Emergencies	_____
f. Curtailed Product	_____
g. Excused Product (c + d + e + f)	_____
h. PC Shortfall Amount (a - b - g)	_____

PC REPLACEMENT CALCULATION	
i. PC Replacement Rate	\$ _____
j. PC REPLACEMENT COSTS (h * i)	\$ _____

EXHIBIT 3A

DESCRIPTION OF PROJECT SITE

The Project Site is comprised of the "Playa 2 Array Area A" and "Playa 2 Array Area B" described below and Supplier's interest in, and/or non-exclusive right to use, the area described as "Playa 2 Shared Premises" below (the "Shared Premises").

PROJECT SITE

PLAYA 2 ARRAY AREA "A"

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 35; THENCE ALONG THE SOUTH LINE OF SAID SECTION 35, SOUTH 89°47'51"EAST, A DISTANCE OF 205.95 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 46°32'47" EAST, A DISTANCE OF 1226.35 FEET;
THENCE NORTH 90°00'00" EAST, A DISTANCE OF 1391.20 FEET;
THENCE SOUTH 0°00'00" EAST, A DISTANCE OF 1014.00 FEET;
THENCE NORTH 90°00'00" EAST, A DISTANCE OF 838.00 FEET;
THENCE SOUTH 0°00'00" EAST, A DISTANCE OF 1152.00 FEET;
THENCE NORTH 90°00'00" WEST, A DISTANCE OF 3592.00 FEET;
THENCE NORTH 0°00'00" EAST, A DISTANCE OF 874.85 FEET;
THENCE NORTH 46°32'47" EAST, A DISTANCE OF 650.97 FEET TO THE POINT OF BEGINNING.

CONTAINS 138.91 ACRES, MORE OR LESS.

PLAYA 2 ARRAY AREA "B"

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 2; THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 2, SOUTH 00°20'00"EAST, A DISTANCE OF 2,367.89 FEET TO THE POINT OF BEGINNING.

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 5266.27 FEET;
THENCE SOUTH 47°32'11" EAST, A DISTANCE OF 1518.53 FEET;
THENCE SOUTH 0°00'00" EAST, A DISTANCE OF 1140.81 FEET;
THENCE NORTH 90°00'00" WEST, A DISTANCE OF 7880.00 FEET;
THENCE NORTH 0°00'00" EAST, A DISTANCE OF 2166.00 FEET;
THENCE NORTH 90°00'00" EAST, A DISTANCE OF 1493.50 FEET TO THE POINT OF BEGINNING.

CONTAINS 378.65 ACRES, MORE OR LESS.

EXHIBIT 3A

DESCRIPTION OF PROJECT SITE

PLAYA 2
SHARED PREMISES

PARCEL A

BEING A PORTION OF SECTION 35 AND 36, TOWNSHIP 17 SOUTH RANGE 63 EAST, AND SECTIONS 1, 2 AND 3 OF TOWNSHIP 18 SOUTH RANGE 63 EAST, M.D.M., CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 35; THENCE ALONG THE SOUTH LINE OF SAID SECTION 35, SOUTH 89°47'51" EAST, A DISTANCE OF 141.15 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID SOUTH LINE, NORTH 47°44'58" EAST, A DISTANCE OF 2587.98 FEET;

THENCE SOUTH 40°35'10" EAST, A DISTANCE OF 1,028.12 FEET;

THENCE NORTH 46°04'13" EAST, A DISTANCE OF 1,513.46 FEET;

THENCE SOUTH 43°55'47" EAST, A DISTANCE OF 302.35 FEET;

THENCE SOUTH 49°18'32" WEST, A DISTANCE OF 199.86 FEET;

THENCE SOUTH 40°33'39" EAST, A DISTANCE OF 327.31 FEET;

THENCE SOUTH 46°04'13" WEST, A DISTANCE OF 330.82 FEET;

THENCE NORTH 43°55'47" WEST, A DISTANCE OF 317.80 FEET;

THENCE SOUTH 46°04'13" WEST, A DISTANCE OF 981.40 FEET;

THENCE SOUTH 40°35'10" EAST, A DISTANCE OF 978.47 FEET TO THE SOUTH LINE OF SAID SECTION 35;

THENCE DEPARTING SAID SOUTH LINE, SOUTH 40°35'10" EAST, A DISTANCE OF 1,109.33 FEET;

THENCE NORTH 49°47'48" EAST, A DISTANCE OF 1,434.96 FEET;

THENCE SOUTH 41°19'01" EAST, A DISTANCE OF 120.02 FEET;

THENCE SOUTH 49°47'48" WEST, A DISTANCE OF 1,436.49 FEET;

THENCE SOUTH 40°35'10" EAST, A DISTANCE OF 636.10 FEET;

THENCE SOUTH 88°10'27" WEST, A DISTANCE OF 4,764.63 FEET TO THE WEST LINE OF SAID SECTION 2;

THENCE DEPARTING SAID WEST LINE, SOUTH 88°15'03" WEST, A DISTANCE OF 1,591.00 FEET;

THENCE NORTH 46°33'01" EAST, A DISTANCE OF 2,178.89 FEET TO SAID WEST LINE;

THENCE DEPARTING SAID WEST LINE, NORTH 47°04'41" EAST, A DISTANCE OF 191.71 FEET TO THE POINT OF BEGINNING.

EXHIBIT 3A

DESCRIPTION OF PROJECT SITE

EXCLUDING THE FOLLOWING DESCRIBED AREA;

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 35; THENCE ALONG THE SOUTH LINE OF SAID SECTION 35, SOUTH 89°47'51" EAST, A DISTANCE OF 205.95 FEET TO THE POINT OF BEGINNING;

**THENCE NORTH 46°32'47" EAST, A DISTANCE OF 1226.35 FEET;
THENCE NORTH 90°00'00" EAST, A DISTANCE OF 1391.20 FEET;
THENCE SOUTH 0°00'00" EAST, A DISTANCE OF 1014.00 FEET;
THENCE NORTH 90°00'00" EAST, A DISTANCE OF 838.00 FEET;
THENCE SOUTH 0°00'00" EAST, A DISTANCE OF 1152.00 FEET;
THENCE NORTH 90°00'00" WEST, A DISTANCE OF 3592.00 FEET;
THENCE NORTH 0°00'00" EAST, A DISTANCE OF 874.85 FEET;
THENCE NORTH 46°32'47" EAST, A DISTANCE OF 650.97 FEET TO THE POINT OF BEGINNING.**

SHARED ACCESS AREA IN PARCEL "A" CONTAINS 116.87 ACRES, MORE OR LESS.

PARCEL B

BEING A PORTION OF SECTIONS 1, 2, 3, 10, 11, 12, 13 AND 14 OF TOWNSHIP 18 SOUTH, RANGE 63 EAST, M.D.M., CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS;

COMMENCING AT THE QUARTER CORNER COMMON TO SAID SECTIONS 2 AND 3; THENCE NORTHERLY ALONG THE COMMON SECTION LINE OF SAID SECTION 2 AND 3, NORTH 00°20'00" WEST, A DISTANCE OF 1,069.86 FEET TO THE POINT OF BEGINNING

**THENCE NORTH 88°10'27" EAST, A DISTANCE OF 4,806.08 FEET;
THENCE SOUTH 40°35'10" EAST, A DISTANCE OF 738.16 FEET TO THE SECTION LINE COMMON TO SAID SECTIONS 1 AND 2;
THENCE DEPARTING SAID SECTION LINE, SOUTH 40°35'10" EAST, A DISTANCE OF 1,021.51 FEET;
THENCE NORTH 49°21'56" EAST, A DISTANCE OF 1,431.51 FEET;
THENCE SOUTH 40°37'38" EAST, A DISTANCE OF 100.00 FEET;
THENCE SOUTH 49°21'56" WEST, A DISTANCE OF 1,431.58 FEET;
THENCE SOUTH 40°35'10" EAST, A DISTANCE OF 1,755.32 FEET;
THENCE SOUTH 36°45'29" WEST, A DISTANCE OF 107.28 FEET;
THENCE SOUTH 42°50'20" WEST, A DISTANCE OF 422.31 FEET;
THENCE SOUTH 62°37'29" WEST, A DISTANCE OF 577.09 FEET;
THENCE SOUTH 71°44'27" WEST, A DISTANCE OF 362.00 FEET;
THENCE NORTH 90°00'00" WEST, A DISTANCE OF 644.74 FEET;**

EXHIBIT 3A

DESCRIPTION OF PROJECT SITE

**THENCE SOUTH 45°00'00" WEST, A DISTANCE OF 52.43 FEET;
THENCE SOUTH 0°00'00" EAST, A DISTANCE OF 521.27 FEET;
THENCE SOUTH 54°38'09" WEST, A DISTANCE OF 352.93 FEET;
THENCE SOUTH 0°00'00" EAST, A DISTANCE OF 454.39 FEET;
THENCE SOUTH 51°55'07" WEST, A DISTANCE OF 2,253.64 FEET;
THENCE NORTH 90°00'00" WEST, A DISTANCE OF 1,677.23 FEET;
THENCE NORTH 44°30'38" WEST, A DISTANCE OF 8,196.03 FEET;
THENCE NORTH 88°15'03" EAST, A DISTANCE OF 4,220.57 FEET TO THE POINT OF
BEGINNING.**

EXCLUDING THE FOLLOWING DESCRIBED AREA;

**COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 2; THENCE ALONG
THE WEST LINE OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 2,
SOUTH 00°20'00" EAST, A DISTANCE OF 2,367.89 FEET TO THE POINT OF
BEGINNING.**

**THENCE NORTH 90°00'00" EAST, A DISTANCE OF 5266.27 FEET;
THENCE SOUTH 47°32'11" EAST, A DISTANCE OF 1518.53 FEET;
THENCE SOUTH 0°00'00" EAST, A DISTANCE OF 1140.81 FEET;
THENCE NORTH 90°00'00" WEST, A DISTANCE OF 7880.00 FEET;
THENCE NORTH 0°00'00" EAST, A DISTANCE OF 2166.00 FEET;
THENCE NORTH 90°00'00" EAST, A DISTANCE OF 1493.50 FEET TO THE POINT OF
BEGINNING.**

SHARED ACCESS AREA IN PARCEL "B" CONTAINS 573.14 ACRES, MORE OR LESS.

END OF DESCRIPTION

EXHIBIT 3B

MAP DEPICTING PROJECT SITE

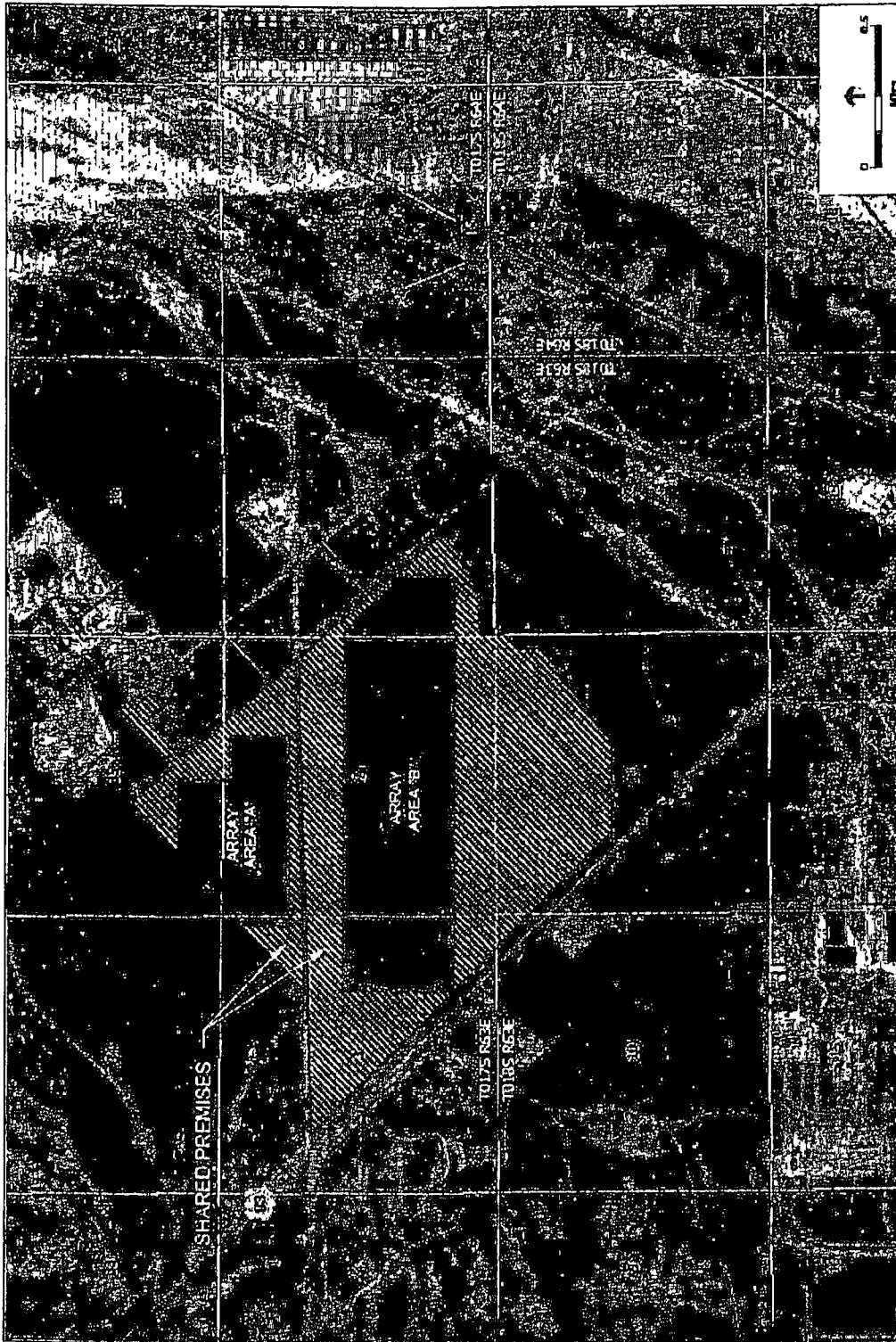


EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

SUPPLIER:

Playa Solar 2, LLC

Contact	Mailing Address	Phone	E-mail
<u>Contract Representative:</u>			
Vice President, Project Development	135 Main Street, 6 th Floor San Francisco, CA 94105	415-935-2490	
<u>Operating Representative:</u>			
Control Room		419-662-7062 419-662-8525 (fax)	
<u>Operating Notifications:</u>			
Prescheduling		419-662-7062	
Real-Time Monthly Checkout			
<u>Invoices:</u>			
First Solar Development, Accounts Receivable		602-414-9305 602-414-9405 (fax)	

PAYMENT INSTRUCTIONS

Payment by Check:

Name and/or Title/Department
Address [inc. Mail/Suite #s]
City, ST & Zip

OR

Payment by Wire Transfer:

Bank Name
Bank Address
Bank City, ST & Zip
Account Name
ABA
Account Number
Reference

EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

BUYER:

NV ENERGY

<u>Contact</u>	<u>Mailing Address</u>	<u>Phone</u>	<u>E-mail</u>
<u>Contract Representatives</u>			
Vincent Burton Manager, Energy Supply Contract Management	6226 West Sahara Avenue Las Vegas, Nevada 89146	(702) 402-5667	vburton@nvenergy.com

Operating Representatives

Scheduling

Short-term Analysis

Generation Dispatch

Emergencies (including Force Majeure)

Grid Reliability

Transmission - NPC

Transmission - SPPC

Short-term Analysis

Planned Outages - NPC

Planned Outages - SPPC

Metering - NPC

Metering - SPPC

Invoices

Renewables Contracts Accountant

CC all invoices to

Renewables Contracts Agent

EXHIBIT 5

**ONE-LINE DIAGRAM OF GENERATING FACILITY
AND
INTERCONNECTION FACILITIES**

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

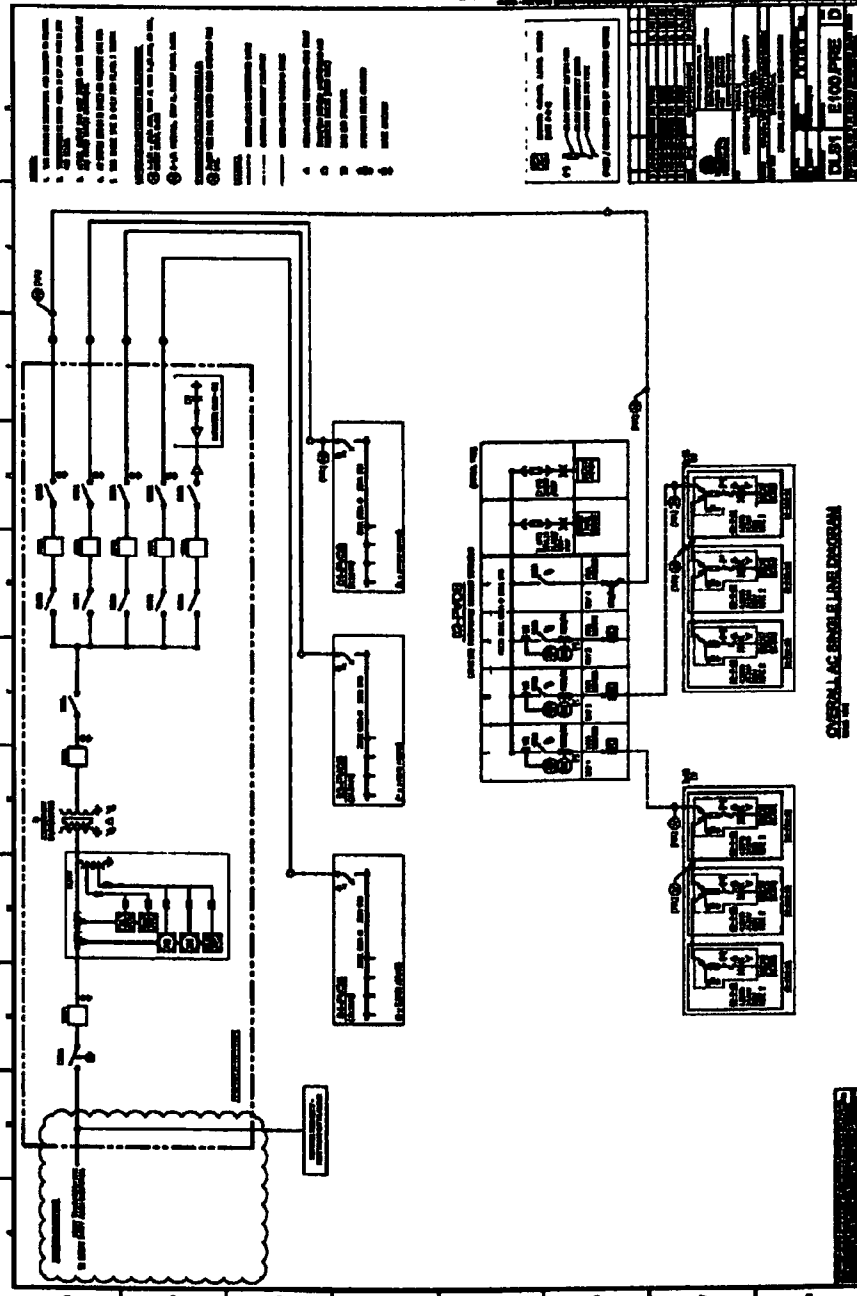


EXHIBIT 6

PROJECT MILESTONE SCHEDULE

1. All time periods are in months after the PUCN Approval Date. As stated below for convenience of drafting after PUCN Approval will be shown as "AA". Any other timing is as otherwise described in specific items below. Buyer will update this Exhibit 6 with actual dates after PUCN Approval is received.
2. All milestones may be completed earlier than stated times, at the sole option of Supplier.

A) **Project Milestone:** Supplier shall have **executed the IA.**

Completion Date: PUCN Approval Date.

Documentation: Supplier shall provide Buyer with a fully executed copy of the IA.

B) **Project Milestone:** Supplier shall obtain all Required Facility Documents to **construct** the Generating Facility, including UEPA permit.

Completion Date: Five (5) months AA or June 1, 2016 whichever is later.

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

C) **Project Milestone:** Supplier's **major equipment shall be delivered** to Generating Facility's construction site

Completion Date: Eight (8) months AA or September 1, 2016 whichever is later..

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

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

Completion Date: December 31, 2016.

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

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

EXHIBIT 6

PROJECT MILESTONE SCHEDULE

Completion Date: December 31, 2016.

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

CRITICAL PROJECT MILESTONES

- F) **Project Milestone:** Supplier shall demonstrate to Buyer that it has complete **financing** for construction of the Generating Facility.

Completion Date: Six (6) months AA or July 1, 2016 whichever is later.

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

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

Completion Date: Six (6) months AA or July 1, 2016 whichever is later.

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

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

Completion Date: May 31, 2017 ("**Commercial Operation Deadline**").

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

EXHIBIT 7

PERFORMANCE TESTS

1. **Plant Capacity Test – Power Performance Index (PPI) to confirm installed capacity as required under the EPC Contract.**
2. **Performance tests required by the IA.**

EXHIBIT 8

FORM OF AVAILABILITY NOTICE

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

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

EXHIBIT 8

FORM OF AVAILABILITY NOTICE

Date For Notice: 04/02/09

Supplier: Supplier XYZ

Name of Suppliers Representative: Supplier Rep name here

Buyer: NPC

Contact Info: Supplier Address here
City, State, Zip here
123-456-7890

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

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

EXHIBIT 9

BUYER'S REQUIRED REGULATORY APPROVALS

1. **PUCN Approval of this Agreement.**

EXHIBIT 10

SUPPLIER'S REQUIRED REGULATORY APPROVALS

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

EXHIBIT 11

OMITTED

EXHIBIT 12**REQUIRED FACILITY DOCUMENTS**

1. This Agreement.
2. The IA.
3. Supplier's required permits for construction and operation, as detailed in the table below:

Permit	Construction/Operation	Regulatory Body
FEDERAL		
Environmental Assessment Decision Record, National Environmental Policy Act	Construction	U.S. Bureau of Land Management (BLM)
Right of Way, Federal Land Policy and Management Act	Construction	U.S. Bureau of Land Management (BLM)
Endangered Species Act (ESA) Compliance/Section 7 Biological Opinion	Construction	United States Fish and Wildlife Service (USFWS)
Section 404 Jurisdictional Determination	Construction	United States Army Corps of Engineers (USACOE)
Section 106 National Historic Preservation Act Finding of Eligibility	Construction	Bureau of Land Management (BLM) State Historic Preservation Office (SHPO)
State of Nevada		
Utilities Environmental Protection Act (UEPA) Permit to Construct	Construction	Public Utilities Commission of Nevada
Fugitive Dust Control Permit	Construction/Operation	Clark County Department of Air Quality
Other Permits	Construction/Operation	Clark County

EXHIBIT 13**SUPPLY AMOUNT**

The Supply Amount(s) shall be the Energy amounts for a typical Delivery Hour that are expected to 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
100	Off-Peak	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
200		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
300		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
400		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
500	On-Peak	0.00	0.00	0.00	0.00	0.58	1.54	0.47	0.00	0.00	0.00	0.00	0.00
600		0.00	0.00	0.48	10.68	41.93	48.59	32.27	17.64	3.53	0.12	0.00	0.00
700		0.00	2.79	33.31	60.11	87.58	87.91	73.46	69.01	55.88	33.53	7.15	0.09
800		27.82	43.17	82.04	88.17	93.90	96.84	88.38	89.81	88.64	78.67	53.41	33.61
900		57.62	63.38	90.83	90.08	94.03	95.73	90.91	89.19	96.28	85.80	69.85	61.87
1000		64.94	68.63	91.30	90.85	90.64	97.04	91.73	93.92	97.62	83.75	73.30	68.95
1100		61.12	72.70	88.32	90.35	95.48	97.72	89.03	96.39	98.93	83.65	67.90	60.32
1200		59.61	70.48	89.52	92.17	94.21	99.75	93.62	97.98	95.60	80.08	69.13	61.78
1300		61.38	68.43	87.35	89.32	95.68	97.77	92.25	95.32	93.32	77.03	70.67	62.57
1400		59.54	65.80	84.53	89.16	96.58	98.71	91.35	90.78	91.75	78.66	70.73	63.12
1500		61.50	61.72	85.62	87.04	98.41	94.85	90.43	87.09	94.01	75.70	64.39	57.37
1600		45.09	53.27	74.11	82.42	95.55	93.87	88.02	82.97	85.73	64.19	40.79	38.77
1700		7.23	30.88	51.21	65.63	86.58	87.44	82.03	69.82	53.69	15.71	2.52	0.98
1800		0.00	0.91	7.05	24.43	45.17	54.84	52.73	32.14	8.58	0.03	0.00	0.00
1900		0.00	0.00	0.00	0.11	4.35	10.06	8.92	1.55	0.00	0.00	0.00	0.00
2000		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2100		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2200	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
2300	On-Peak	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2400	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Daily Supply Amount (MWh)		505.85	602.10	865.68	958.63	1118.65	1181.68	1085.59	1013.57	959.52	755.92	589.84	509.41
Daily On-Peak Supply Amount (MWh)		505.85	602.10	865.68	958.63	1118.65	1181.68	1085.59	1013.57	959.52	755.92	589.84	509.41
Monthly Supply Amount (MWh)		15,681.35	16,858.80	26,838.08	28,755.90	34,678.15	34,849.80	33,033.29	31,420.87	28,785.80	23,433.62	17,895.20	15,791.71
Annual Supply Amount (MWh)		307,820.07											
Maximum Amount (MW)		100.00											

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

EXHIBIT 14

DIAGRAM OF GENERATING FACILITY

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

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

EXHIBIT 15

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

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

EXHIBIT 16

REAL PROPERTY RIGHTS

In accordance with Section 8.10, Supplier shall provide Exhibit 16 no later than sixty (60) days prior to commencement of on-site development activities at the Generating Facility.

EXHIBIT 17

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

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

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

Date of Issue: [_____] , 20__

Stated Expiration Date: [_____]

Applicant:

Stated Amount: USD \$[_____]

[_____]
[_____]
[_____]

Beneficiary:

Credit Available With: [_____]

EXHIBIT 17

FORM OF LETTER OF CREDIT

Ladies and Gentlemen:

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

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

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

Drawing Requests and all communications with respect to this Letter of Credit shall be in writing and 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 provide telephone notification to us at [*Telephone number of Issuing Bank*] prior to or simultaneously with the sending of such facsimile transmission; provided, however, that our receipt of such telephone notice 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 on any Business Day (as defined below), payment will be made not later than the following Business Day. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as is set forth below.

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 and a day on which payments can be effected on the Fedwire system.

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

EXHIBIT 17

FORM OF LETTER OF CREDIT

the original of this Letter of Credit; or (2) the Stated Expiration Date. It is a condition of this letter of credit that it and the Stated Expiration Date 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-Extension") 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-Extension has been sent to the Beneficiary in accordance herewith, the Beneficiary is authorized to draw on us up to, in the aggregate, the full Available Amount of this Letter of Credit, by presentation to us, in the manner and at the address specified in the third preceding paragraph, of a Drawing Request completed in the form of Annex 1 hereto and sent and purportedly signed by 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 and conditions of this Letter of Credit, we shall send 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 (if any) 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 and conditions 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. The foregoing notwithstanding, this Letter of Credit is subject to the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law and Practice ("ISP 98") and, as to matters not governed by ISP 98, shall be governed by and construed in accordance with the laws of the State of New York.

THIS LETTER OF CREDIT IS TRANSFERABLE BY US TO A DIFFERENT BENEFICIARY UPON YOUR REQUEST, BUT ONLY IN ITS ENTIRETY, AND MAY BE SUCCESSIVELY TRANSFERRED. TRANSFER OF THIS LETTER OF CREDIT SHALL BE EFFECTED BY US TO A DIFFERENT BENEFICIARY UPON SUBMISSION BY BENEFICIARY OF THIS ORIGINAL LETTER OF CREDIT, INCLUDING ALL AMENDMENTS, IF ANY, ACCOMPANIED BY A REASONABLE TRANSFER REQUEST FORM, PROVIDED BY US, DULY COMPLETED AND SIGNED, WITH THE SIGNATURE THEREON AUTHENTICATED. WE MUST COMPLY WITH ALL SANCTIONS, EMBARGO AND OTHER LAWS AND REGULATIONS OF THE U.S. AND OF OTHER APPLICABLE JURISDICTIONS TO THE ("APPLICABLE RESTRICTIONS"). THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED TO ANY PERSON OR ENTITY LISTED IN OR OTHERWISE SUBJECT TO ANY APPLICABLE RESTRICTIONS.

EXHIBIT 17

FORM OF LETTER OF CREDIT

All banking charges are for the account of the Applicant.

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

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

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

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

PLEASE DIRECT ALL CORRESPONDENCE AND ANY DRAWINGS IN CONNECTION WITH THIS STANDBY LETTER OF CREDIT TO OUR OFFICE AT [*Address of Issuing Bank*], Attn: [].

[*Name of Issuing Bank*]

Authorized signature

EXHIBIT 17

FORM OF LETTER OF CREDIT

ANNEX 1

[Letterhead of a Beneficiary]

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

DRAWING REQUEST

[Date]

[name and address of Issuing Bank]

Ladies and Gentlemen:

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

In connection with this drawing, we hereby certify that:

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

[Use one or more of the following forms of paragraph B, as applicable]

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

or

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

and

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

EXHIBIT 17

FORM OF LETTER OF CREDIT

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

[Beneficiary]

By: _____

Name:

Title:

cc:

[Applicant name and address]

EXHIBIT 18

YEARLY PC AMOUNT

Yearly PC Amount	307,820,070
-------------------------	--------------------

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, acting in its merchant function capacity (together with its permitted successors and assigns, "NVE"), _____, in its capacity as [Administrative Agent] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, "Administrative Agent"), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, "Borrower"). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

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

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

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

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

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

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

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 and as provided in Section 1(C) below. Upon receipt of notice from Administrative Agent, NVE agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the PPA and this Consent. Upon receipt of Administrative Agent's written instructions, NVE agrees to make directly to Administrative Agent all payments to be made by NVE to Borrower under the PPA from and after NVE's receipt of such instructions, and Borrower consents to any such action.

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

(C) NVE agrees to deliver duplicates or copies of all notices of default delivered by NVE under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. NVE may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have: (a) the same period of time plus an additional ten (10) days to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to NVE which are due and payable by Borrower under the PPA, except that if NVE does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent, or (b) the applicable cure period under the PPA plus thirty (30) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to NVE, so long as Administrative Agent continues to perform any monetary obligations under the PPA and all other obligations under the PPA are performed by Borrower or Administrative Agent or its designees or assignees. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designees or assignees declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designees or assignees will be allowed a reasonable period to complete such proceedings but not to exceed ninety (90) days. NVE consents to the transfer of Borrower's interest under the PPA to a Qualified Transferee upon enforcement of such security at a foreclosure sale by judicial or non-judicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, NVE shall recognize such Qualified Transferee as the applicable party under the PPA (provided that such Qualified Transferee assumes the obligations of Borrower under the PPA). Qualified Transferee means a Person that is at least as financially and operationally qualified as Borrower and, at a minimum, has a tangible net worth of at least thirty million dollars (\$30,000,000) and has, or has entered into a contract for operations

EXHIBIT 19

FORM OF LENDERS CONSENT

and maintenance services with a third party for a minimum of five (5) years that has, at least three (3) years of experience operating a generating plant of similar technology and similar size to the Project.

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

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

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

[(G) Include understandings between NVE, Administrative Agent and Lenders concerning NVE's exercise of Step-in Rights.]

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

EXHIBIT 19

FORM OF LENDERS CONSENT

of the matters stated below, and without imputation to NVE of any knowledge whatsoever relating to the NVE Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

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

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

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

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

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

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

SECTION 3. NOTICES

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

If to NVE:

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FORM OF LENDERS CONSENT

Telephone No.: [_____]
Telecopy No.: [_____]
Attn: [_____]

If to Administrative Agent:
[_____]
[_____]
[_____]
Telephone No.: [_____]
Telecopy No.: [_____]
Attn: [_____]

If to Borrower:
[_____]
[_____]
[_____]
Telephone No.: [_____]
Telecopy No.: [_____]
Attn: [_____]

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

SECTION 4. CONFIRMATION, TERMINATION, AMENDMENT AND GOVERNING LAW

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

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FORM OF LENDERS CONSENT

SECTION 5. COUNTERPARTS

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

SECTION 6. SEVERABILITY

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

SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the PPA, NVE may perform as set forth herein and that neither the execution of this Consent, the performance by NVE of any of the obligations of NVE hereunder, the exercise of any of the rights of NVE hereunder, or the acceptance by NVE of performance of the PPA by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the PPA, (2) constitute a consent by NVE to, or impute knowledge to NVE of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by NVE of any of its rights under the PPA. Borrower and Administrative Agent acknowledge hereby for the benefit of NVE that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the PPA. Borrower shall have no rights against NVE on account of this Consent.

SECTION 8. JURY TRIAL WAIVER

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

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

Nevada Power Company

By: _____

Name: _____

Title: _____

_____,
a _____

EXHIBIT 19

FORM OF LENDERS CONSENT

By: _____
Name: _____
Title: _____

as Administrative Agent for the Lenders

[Borrower]

By: _____
Name: _____
Title: _____

EXHIBIT 20

FORM OF GUARANTEE

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

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

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

Section 2. Guarantee.

(a) **Guarantee.** Guarantor hereby irrevocably and unconditionally guarantees to and for the benefit of Company, the full and prompt performance and payment by Subsidiary of each and every obligation of Subsidiary arising under the Agreement up to the limitations set forth in the Agreement, including, without limitation, the payment when due of all indemnities, refunds and liquidated damages payable at any time under the Agreement (the "**Guaranteed Obligations**"). The Guaranteed Obligations shall further include, without limitation, (i) interest accruing as part of the Guaranteed Obligations according to the terms thereof following the commencement by or against the Subsidiary of any case or proceeding under any Applicable Law relating to bankruptcy, insolvency, reorganization, winding-up, liquidation, dissolution or composition or adjustment of debt and (ii) all reasonable costs and expenses (including reasonable attorneys' fees), if any, incurred in successfully enforcing Company's rights under this Guarantee. Guarantor further agrees that if Subsidiary shall fail to pay or perform in full when due all or any part of the Guaranteed Obligations, Guarantor will promptly pay or perform (or promptly procure the payment or performance of) the same in accordance with, and up to the limitations set forth in the Agreement.

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

(c) **Absolute Guarantee.** Guarantor agrees that its obligations under this Guarantee are irrevocable, absolute, independent, unconditional and continuing and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment and performance in full of the Guaranteed Obligations. In furtherance of the

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FORM OF GUARANTEE

foregoing and without limiting the generality thereof, Guarantor agrees, subject to the other terms and conditions hereof, as follows:

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

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

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

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

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

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

Section 3. Other Provisions of the Guarantee.

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

- (i) notice of acceptance hereof;
- (ii) notice of any action taken or omitted to be taken by Company in reliance hereon;
- (iii) any right to require Company, as a condition of payment or performance by Guarantor, to (A) proceed against or exhaust its remedies against Subsidiary or any person, including any other guarantor of the Guaranteed Obligations, or (B) proceed against or exhaust any security held from Subsidiary or any person, including any other guarantor of the Guaranteed Obligations;
- (iv) subject to Clause 2(e), any defense arising by reason of the incapacity, lack of authority or any disability of Subsidiary including, without limitation, any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Subsidiary from any cause other than payment or performance in full of the Guaranteed Obligations or termination of this Guarantee in accordance with its terms;

(v) any requirement that Company protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(vi) any requirement that Company be diligent or prompt in making demands hereunder or give notices of default under the Agreement, notices of any renewal, extension or

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

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

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

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

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

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

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

(d) This Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor have been duly executed and delivered by Guarantor and constitute the legal, valid and binding obligations of Guarantor, enforceable against it in accordance with their respective terms.

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

(f) There are no actions, suits, investigations, proceedings, condemnations, or audits by or before any court or other governmental or regulatory authority or any arbitration proceeding pending or, to its actual knowledge after due inquiry, threatened against or affecting Guarantor, its properties, or its assets.

(g) All necessary action has been taken under Applicable Laws to authorize the execution, delivery and performance of this Guarantee. No governmental approvals or other consents, approvals, or notices of or to any person are required in connection with the execution, delivery, performance by Guarantor, or the validity or enforceability, of this Guarantee.

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

(a) If to Guarantor:

[

Attention: _____
Facsimile: _____]

(b) If to Company:

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

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

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

The addresses and facsimile numbers of either party for notices given pursuant to this Guarantee may be changed by means of a written notice given to the other party at least three (3) Business Days (being a day on which clearing banks are generally open for business in the jurisdiction of the party to whom a notice is sent) prior to the effective date of such change. Any notice

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required or authorized to be given hereunder shall be in writing (unless otherwise provided) and shall be served (i) personally, (ii) by courier service or (iii) by facsimile transmission addressed to the relevant Person at the address stated below or at any other address notified by that Person as its address for service. Any notice so given personally shall be deemed to have been served on delivery, any notice so given by express courier service shall be deemed to have been served the next Business Day after the same shall have been delivered to the intended Person, and any notice so given by facsimile transmission shall be deemed to have been served on dispatch unless dispatched after the recipient's normal business hours on a Business Day or dispatched on any day other than a Business Day, in which case such notice shall be deemed to have been delivered on the next Business Day. As proof of such service it shall be sufficient to produce a receipt showing personal service, the receipt of a courier company showing the correct address of the addressee or an activity report of the sender's facsimile machine showing the correct facsimile number of the Person on whom notice is served and the correct number of pages transmitted.

Section 6. Miscellaneous Provisions.

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

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

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

(d) **Termination, Limits and Release.** This Guarantee is irrevocable, unconditional and continuing in nature and is made with respect to all Guaranteed Obligations now existing or hereafter arising and shall remain in full force and effect until the earlier of (i) the time when in accordance with the terms of the Agreement all of the Guaranteed Obligations are fully satisfied and discharged, and (ii) except in respect of claims hereunder notified prior to such date, one year following the expiration of the Warranty Period (as such Warranty Period may be extended under the Agreement), then, and only then, this Guarantee shall automatically be released and shall be of no further force and effect; otherwise, it shall remain in full force and effect. Other than as set forth in the previous sentence, no release of this Guarantee shall be valid unless executed by Company and delivered to Guarantor. Except with respect to (x) claims made by, damages incurred by, or amounts payable to third parties pursuant to an indemnity given under the Agreement and (y) claims arising out of Subsidiary's fraud or willful misconduct, all as

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provided in Section 29.2 of the Agreement, the maximum aggregate liability of Guarantor hereunder shall be the Contract Price.

(e) Law and Jurisdiction.

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

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

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

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

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

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

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

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

[Signature page follows.]

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

[GUARANTOR]

Name:

Title:

Acknowledged and Accepted:

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

Name:

Title:



July XX, 2015

Advice Letter 451

**Ms. Trisha Osborne, Assistant Commission Secretary
Public Utilities Commission of Nevada
Capitol Plaza
1150 East William Street
Carson City, Nevada 89701-3109**

Dear Ms. Osborne:

Nevada Power Company ("NPC") d/b/a as NV Energy hereby submits for filing tariff sheet, 15L. This revised sheet modifies Special Condition 9 of the LGS-3P-HLF tariff. Currently any customer choosing to take service under this schedule is required to remain a bundled, full requirement customer of the Utility for a minimum term of five years (60 billing periods). The proposed modification would reduce this minimum term to 3 years (36 billing periods) from commencement of service under the LGS-3P-HLF tariff.

The proposed change does not increase any rate or charge and is therefore properly filed as an advice letter pursuant to NRS 704.100, 1(f).

The Company respectfully requests that the Commission approve the enclosed tariffs at its earliest convenience.

If you have any questions, please do not hesitate to contact me at (775) 834-5823.

Sincerely,

**Trevor Dillard
Manager, Regulatory Services**

Enclosures