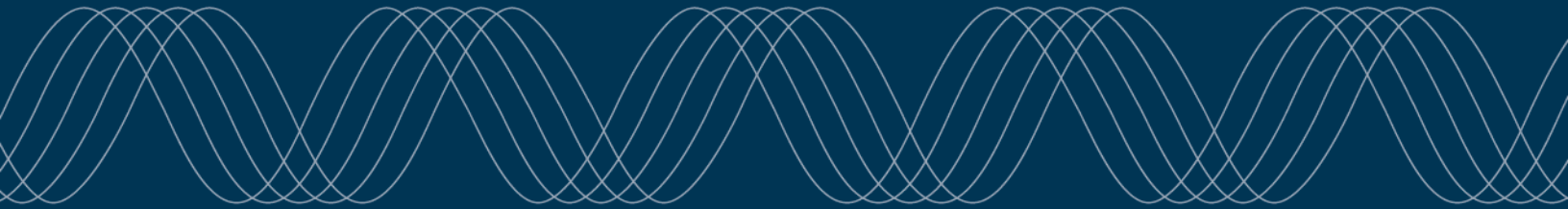


Appendix B

# BTA Form Agreement



2025 All-Source RFP



**BUILD TRANSFER AGREEMENT**

**by and between**

**[Seller's Name]**

**and**

**Portland General Electric Company**

**[Date]**

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
ARTICLE I DEFINITIONS; USAGE .....	1
<b>1.1 Definitions</b> .....	<b>1</b>
<b>1.2 Rules as to Usage</b> .....	<b>23</b>
<b>1.3 Schedules and Exhibits</b> .....	<b>25</b>
<b>1.4 No Construction Against Drafter.</b> .....	<b>25</b>
ARTICLE II PURCHASE AND SALE; PURCHASE PRICE; CLOSING .....	25
<b>2.1 Effective Date; Purchase and Sale; Excluded Assets; Excluded Liabilities; Assumed Liabilities</b> .....	<b>25</b>
<b>2.2 Purchase Price</b> .....	<b>28</b>
<b>2.3 Tax Treatment of Purchase Price</b> .....	<b>30</b>
<b>2.4 The Closing</b> .....	<b>31</b>
<b>2.5 Closing Deliveries</b> .....	<b>31</b>
<b>2.6 Further Assurances; Post-Closing Cooperation</b> .....	<b>32</b>
ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER .....	34
<b>3.1 Existence</b> .....	<b>34</b>
<b>3.2 Authority</b> .....	<b>35</b>
<b>3.3 Binding Agreement</b> .....	<b>35</b>
<b>3.4 No Conflicts</b> .....	<b>35</b>
<b>3.5 Governmental Approvals and Filings</b> .....	<b>36</b>
<b>3.6 Legal Proceedings</b> .....	<b>36</b>
<b>3.7 Compliance with Laws</b> .....	<b>36</b>
<b>3.8 Title to Project Assets</b> .....	<b>36</b>
<b>3.9 Real Property</b> .....	<b>37</b>
<b>3.10 Sufficiency of Project Assets</b> .....	<b>38</b>
<b>3.11 No Seller Material Adverse Effect</b> .....	<b>39</b>
<b>3.12 Contracts</b> .....	<b>39</b>
<b>3.13 Permits</b> .....	<b>39</b>
<b>3.14 Insurance</b> .....	<b>41</b>
<b>3.15 Environmental Matters</b> .....	<b>41</b>

3.16	Employee and Employee Benefits Matters .....	42
3.17	Brokers.....	42
3.18	Intellectual Property .....	43
3.19	Reports .....	43
3.20	Anti-Corruption .....	43
3.21	Solvency .....	44
3.22	Taxes.....	44
3.23	Anti-Forced Labor Compliance.....	45
3.24	Prevailing Wage and Apprenticeship Requirements. ....	45
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER.....		45
4.1	Existence .....	46
4.2	Authority.....	46
4.3	Binding Agreement .....	46
4.4	No Conflicts .....	46
4.5	Governmental Approvals and Filings .....	47
4.6	Legal Proceedings .....	47
4.7	Brokers.....	47
4.8	Financial Resources .....	47
4.9	Solvency .....	47
4.10	Anti-Corruption .....	48
ARTICLE V COVENANTS.....		48
5.1	Efforts to Close and Fulfillment of Conditions .....	48
5.2	Consents and Approvals.....	49
5.3	Limitation .....	49
5.4	Real Estate Matters.....	49
5.5	Conduct of Business.....	52
5.6	Purchaser's Inspection Right.....	53
5.7	Insurance .....	55
5.8	Update of Seller's Disclosure Schedule .....	55
5.9	Delay Damages; Firm Transmission Agreements.....	56
5.10	Reports .....	57
5.11	Certain Agreements .....	58
5.12	Interconnection Agreement.....	58

5.13	Permits .....	59
5.14	Completion Certificates; Final Completion.....	59
5.15	Schedule and Cost Relief Procedures for Change Events; Purchaser Initiated Changes. ....	60
5.16	Performance Security .....	63
5.17	Licensed Professional Engineer. ....	63
5.18	Performance Guarantees.....	63
5.19	Oregon House Bill 2021 Compliant Labor. ....	64
ARTICLE VI CONDITIONS TO CLOSING; CONDITIONS TO FIRM DATE .....		64
6.1	Purchaser's Conditions Precedent .....	64
6.2	Seller's Conditions Precedent .....	66
6.3	Firm Date Conditions of Purchaser and Seller .....	67
6.4	Purchaser's Firm Date Conditions.....	67
6.5	Seller's Firm Date Conditions.....	68
6.6	Purchaser Obligation to Deliver Purchaser Firm Date Certificate.....	69
6.7	Seller Obligation to Deliver Seller Firm Date Certificate .....	69
6.8	Firm Date Remedies. ....	69
ARTICLE VII TERMINATION .....		69
7.1	Termination Prior to Closing.....	69
7.2	Effect of Termination or Breach .....	72
ARTICLE VIII INDEMNIFICATION.....		74
8.1	Indemnification by Seller .....	74
8.2	Indemnification by Purchaser .....	75
8.3	Method of Asserting Claims.....	76
8.4	Limitations of Liability.....	77
8.5	Certain Limitations.....	78
8.6	Determination of Losses .....	79
8.7	Mitigation.....	79
ARTICLE IX TAX MATTERS.....		79
9.1	Cooperation .....	79
9.2	Tax Covenants.....	80
9.3	Tax Contests .....	82
9.4	Adjustments to Purchase Price.....	82

ARTICLE X SURVIVAL PERIODS; NO OTHER REPRESENTATIONS .....	82
<b>10.1 Survival of Representations, Warranties, Covenants, and Agreements.....</b>	<b>82</b>
<b>10.2 No Other Representations.....</b>	<b>83</b>
ARTICLE XI DISPUTE RESOLUTION.....	83
<b>11.1 Dispute Resolution .....</b>	<b>83</b>
<b>11.2 Governing Law.....</b>	<b>84</b>
<b>11.3 Exclusive Jurisdiction.....</b>	<b>84</b>
<b>11.4 Waiver of Trial by Jury.....</b>	<b>84</b>
ARTICLE XII LIMITED REMEDIES AND DAMAGES .....	84
<b>12.1 Exclusive Remedies .....</b>	<b>84</b>
<b>12.2 Limitation of Liability .....</b>	<b>85</b>
<b>12.3 Liability Cap Amount.....</b>	<b>85</b>
<b>12.4 Representatives and Affiliates .....</b>	<b>86</b>
ARTICLE XIII MISCELLANEOUS .....	86
<b>13.1 Notices .....</b>	<b>86</b>
<b>13.2 Payments.....</b>	<b>88</b>
<b>13.3 Entire Agreement.....</b>	<b>88</b>
<b>13.4 Expenses.....</b>	<b>89</b>
<b>13.5 Public Announcements .....</b>	<b>89</b>
<b>13.6 Confidentiality.....</b>	<b>89</b>
<b>13.7 Waivers .....</b>	<b>91</b>
<b>13.8 Amendment .....</b>	<b>92</b>
<b>13.9 No Construction Against Drafting Party .....</b>	<b>92</b>
<b>13.10 No Third Party Beneficiary.....</b>	<b>92</b>
<b>13.11 Headings.....</b>	<b>92</b>
<b>13.12 Invalid Provisions.....</b>	<b>92</b>
<b>13.13 Assignment.....</b>	<b>92</b>
<b>13.14 Counterparts .....</b>	<b>93</b>
<b>13.15 No Partnership or Joint Venture.....</b>	<b>93</b>
<b>13.16 Schedules.....</b>	<b>93</b>

## EXHIBITS

Exhibit A-1.....	Form of Seller's Letter of Credit
Exhibit B .....	Form of Bill of Sale
Exhibit C-1 .....	Form of Assignment and Assumption Agreement
Exhibit C-2.....	Form of Real Property Agreement Assignment and Assumption Agreement
Exhibit C-3.....	Form of Transmission Transfer Agreement
Exhibit D-1.....	Form of Purchaser Secretary Certificate
Exhibit D-2.....	Form of Seller Secretary Certificate
Exhibit D-3.....	Form of Seller Incumbency Certificate
Exhibit E .....	Form of EPC Agreement
Exhibit F.....	Reserved
Exhibit G .....	Reserved
Exhibit H.....	Reserved
Exhibit I .....	Form of Estoppels
Exhibit J-1 .....	Form of Purchaser Firm Date Certificate
Exhibit J-2.....	Form of Seller Firm Date Certificate
Exhibit K.....	Reserved
Exhibit L .....	Reserved
Exhibit M .....	Long-Term Service Agreement
Exhibit N.....	Payment Schedule
Exhibit O .....	Equipment Warranty and Performance Guarantees Agreement
Exhibit P.....	Title Exceptions Subject to Cure
Exhibit Q.....	Form of Licensed Professional Engineer Engagement Agreement
Exhibit R.....	Reserved
Exhibit S.....	Form of Transmission Services Agreement
Exhibit T .....	PWA Requirements Certificate

## SCHEDULES

Schedule 1.1(k) .....	Purchaser's Knowledge
Schedule 1.1(l) .....	Required Approvals
Schedule 1.1(o) .....	Seller's Knowledge
Schedule 5.5.2(a) .....	Permitted Contracts

Schedule 5.7 .....Continuing Insurance Coverage  
Schedule 5.10.4 .....Reports Requiring Reliance Letters  
Schedule 5.10.5 .....Qualified Firms and Consultants  
Schedule 5.12.2 .....Purchaser Obligations  
Schedule 6.1.8(c) .....Closing Date Estoppel List  
Schedule 8.4.4(a) .....Purchaser’s “Actual Knowledge”  
Schedule 8.4.4(b) .....Seller’s “Actual Knowledge”

#### SELLER DISCLOSURE SCHEDULES

Schedule 1.1(a) .....Excluded Assets  
Schedule 1.1(b) .....Permits  
Schedule 1.1(c) .....Firm Date Reports  
Schedule 1.1(d) .....Firm Date Required Consents  
Schedule 1.1(e) .....Permitted Liens  
Schedule 1.1(f) .....Project Contracts  
Schedule 1.1(g) .....Project Equipment  
Schedule 1.1(h) .....Project Improvements  
Schedule 1.1(i) .....Project Real Property Agreements  
Schedule 1.1(j) .....Project Site  
Schedule 1.1(m) .....Reserved  
Schedule 1.1(n) .....Seller and Affiliates IP  
Schedule 1.1(p) .....Reserved  
Schedule 1.1(q) .....Seller’s Qualifying Tax Opinion  
Schedule 1.1(r) .....Firm Transmission Agreements  
Schedule 3.4.2 .....Seller’s Consents  
Schedule 3.5 .....Seller’s Governmental Approvals and Filings  
Schedule 3.6 .....Seller’s Legal Proceedings  
Schedule 3.7 .....Compliance with Laws  
Schedule 3.9.3 .....Project Real Property Agreement Defaults / Breaches  
Schedule 3.9.6 .....Real Property Actions  
Schedule 3.10.1 .....Sufficiency of Project Assets  
Schedule 3.10.2 .....Location of Project Equipment and Project Improvements not at  
Project Site  
Schedule 3.12.3 .....EPC Agreement Defaults



Schedule 3.12.5 .....Reserved  
Schedule 3.13.2(c) .....Firm Date Permit or Project Permit Actions  
Schedule 3.13.3 .....Pending Firm Date Permits  
Schedule 3.13.4 .....Pending Closing Date Project Permits  
Schedule 3.14 .....Insurance Policies  
Schedule 3.15.7 .....Environmental or Historic Resources  
Schedule 3.18 .....Intellectual Property  
Schedule 3.19 .....Final Reports

#### PURCHASER DISCLOSURE SCHEDULES

Schedule 4.4.2 .....Purchaser's Consents  
Schedule 4.5 .....Purchaser's Governmental Approvals and Filings  
Schedule 4.6 .....Purchaser's Legal Proceedings

## **BUILD TRANSFER AGREEMENT**

**THIS BUILD TRANSFER AGREEMENT** (the “Agreement”) is made and entered into on [Date] (the “Execution Date”), by and between [SELLER’S NAME], a [State] [Type of Organization] (“Seller”), and **PORTLAND GENERAL ELECTRIC COMPANY**, an Oregon corporation (“Purchaser”). Seller and Purchaser are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

A. Purchaser is a public utility engaged in the generation, transmission, distribution, and sale of electric energy, capacity, and ancillary services in the State of Oregon.

B. Seller and its Affiliates hold or will as of the Closing all assets, properties, rights, and interests (whether real, personal, or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site) which relate to or are used or held for use in connection with the Project.

C. Seller desires to sell and assign to Purchaser, and Purchaser desires to purchase and assume from Seller, all assets, properties, rights, and interests (whether real, personal, or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site) of Seller and its Affiliates which relate to or are used or held for use in connection with the Project, all on the terms and subject to the conditions set forth in this Agreement.

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

### **AGREEMENT**

#### **ARTICLE I DEFINITIONS; USAGE**

##### **1.1 Definitions.**

Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 1.1.

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

“Additional Report” has the meaning set forth in Section 5.10.3.

“Affiliate” of any Person means any other Person directly or indirectly controlling, directly or indirectly controlled by, or under direct or indirect common control with such Person. For purposes of the immediately preceding sentence, the term “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as used

with respect to any Person, means the possession, directly or indirectly, of the power to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any secured lender of such Person.

“Agreement” has the meaning set forth in the Preamble of this Agreement.

“ALTA Survey” means a current survey with respect to each parcel of real property comprising the Project Site upon which Project Facilities are or will be located, prepared and certified by Surveyor and that complies with the 2021 ALTA/NSPS Minimum Detail Requirements for Land Title Surveys and disclosing the location of all existing improvements, plottable encumbrances, easements, rights of way, encroachments, roadways, utility lines, set back lines, and other matters showing access affirmatively to public streets and roads, and including an overlay of the proposed Project Facilities to be installed on the Project Site as indicated by the Project Site Plan.

“Ancillary Agreements” means those other agreements, documents, instruments, or certificates as may be executed and delivered by one or both Parties in connection with this Agreement and the transactions contemplated hereby, including (a) the Bill of Sale, (b) the Assignment and Assumption Agreements, (c) the EPC Agreement, and (d) the LTSA.

“Anti-Forced Labor Law” means (i) the anti-forced labor provisions of Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307), (ii) the Uyghur Forced Labor Prevention Act (Public Law 117–78; 117th Congress; Dec. 23, 2021; H.R. 6256; 135 STAT. 1525), (iii) any other law pertaining to Forced Labor, and (iv) any laws, rules, regulations, guidelines, comments, petitions, investigations, proceedings or actions in connection therewith or otherwise affecting the importation or use of good produced by forced labor.

“Assignment and Assumption Agreements” has the meaning set forth in Section 2.5.1(b).

“Assumed Liabilities” has the meaning set forth in Section 2.1.5(b).

“Bankruptcy” means, with respect to a Person, that such Person (a) commences a voluntary case under the Bankruptcy Code; (b) files a petition seeking to take advantage of any Bankruptcy Laws; (c) consents to or fails to contest in a timely and appropriate manner any petition filed against it in an insolvency case under the Bankruptcy Laws; (d) applies for, or consents to or fails to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of a substantial part of its assets; (e) becomes insolvent, admits in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; (f) makes a general assignment for the benefit of creditors; (g) takes any action for the purpose of effecting any of the foregoing; or (h) has a case or other proceeding commenced by a third party against it seeking (i) relief under any Bankruptcy Laws or (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of such Person of all or any substantial part of its assets, and such case or proceeding continues undismissed or unstayed for a period of sixty (60) days.

“Bankruptcy Code” means Title 11 of the United States Code, as amended from time to time, or any similar federal or state Law for the relief of debtors.

“Bankruptcy Laws” means the Bankruptcy Code and all other liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions in effect from time to time.

“Bill of Sale” has the meaning set forth in Section 2.5.1(a).

“Books and Records” means any and all data, books, records, files, documents, instruments, papers, material correspondence necessary to interpret Reports (to the extent such material correspondence can be reasonably and practically provided), journals, deeds, licenses, Permits, computer files, studies and Reports (including environmental and construction studies and Reports), annual operating plans, monthly operating Reports, operating logs, operations and maintenance records, safety and maintenance manuals, incident Reports, standard OSHA logs, design documents, Job Books (as defined under the EPC Agreement), quality documentation and Reports, hazardous waste disposal records, procedures, and similar items, in each case, (a) in all formats in which they are reasonably and practically available, including electronic, where applicable, and (b) in the possession or control of Seller or its Affiliates and to the extent the same relates to Seller, the Project Site, or the Project, including the Project Assets, including any of the foregoing received in connection with or delivered pursuant to the Project Contracts and the Project Real Property Agreements, but excluding (i) documents subject to attorney-client privilege or information from third parties subject to confidentiality restrictions binding on Seller or its Affiliates (provided that, upon the written request of Purchaser, Seller shall promptly use reasonable efforts to obtain a waiver of such confidentiality restrictions or to facilitate the prompt execution of a confidentiality or other agreement between Purchaser and the disclosing Person that permits the disclosure of such documents or information to Purchaser); (ii) any Books and Records to the extent pertaining to Excluded Assets or Excluded Liabilities; (iii) the in-house, proprietary Intellectual Property developed and owned by Seller or its Affiliates and used or to be used in the development, construction, ownership, and operation of their current or future generation projects (not required for ownership or operation of the Project Site or Project by a third party), as set forth on Schedule 1.1(n); (iv) all Contracts between Operator and any of its subcontractors; (v) any Books and Records pertaining to Construction Costs (including any (A) Subcontracts or (B) records, purchase orders, pricing lists on similar materials related to any Subcontracts); (vi) internal emails or documents of Seller; (vii) any interim or draft, non-final Reports; or (viii) any communications between Seller and its Contractor(s), Subcontractor(s), or suppliers that do not otherwise qualify as a Report.

“Business Day” means the occurrence, after the Effective Date, of the enactment, adoption, promulgation, extension, reimplementation, modification, amendment, or repeal of any Law.

“Change Event” means a Force Majeure Delay or a Purchaser Caused Delay.

“Change of Control” means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller (a) any consolidation or merger of Seller or such owner in which such entity is not the continuing or

surviving entity, (b) a sale or conveyance of any direct or indirect ownership interest in Seller following which Seller's ultimate parent entity no longer, directly or indirectly, controls Seller, or (c) a change in the possession, direct or indirect, of: (i) the power to direct or cause the direction of the management and policies, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, directly or indirectly, of the majority voting securities or any partnership or other ownership interest, of Seller.

“Change Order” means a written instrument signed by Purchaser and Seller authorizing a change in (i) the Work, (ii) the Guaranteed Substantial Completion Date, or (iii) the Purchase Price, as determined pursuant to Section 5.15, which effectively amends this Agreement.

“Claim” means any demand, claim, action, investigation, legal proceeding (whether at law or in equity), or arbitration.

“Claim Notice” has the meaning set forth in Section 8.3.1.

“Claim Threshold” has the meaning set forth in Section 8.4.1.

“Closing” has the meaning set forth in Section 2.4.

“Closing Date” has the meaning set forth in Section 2.4.

“Closing Date Conditions” means the conditions precedent to the Closing Date set forth in Section 6.1 and Section 6.2.

“Closing Date Estoppels” has the meaning set forth in Section 6.1.8(c).

“Closing Date Title Objections” has the meaning set forth in Section 5.4.2.

“Closing Payment” means the amount to be paid by Purchaser to Seller at the Closing in accordance with the Agreement, as set forth in the Payment Schedule.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercially Reasonable Efforts” means, with respect to a given action or desired result, the efforts that a sophisticated energy industry company acting reasonably under similar circumstances would use to take such action or cause such result to occur within the time contemplated by this Agreement but which does not require the performing Person to expend any funds, assume Liabilities, or suffer any other detriment, other than expenditures, Liabilities, or effects that are customary and reasonable in nature and amount in the context of taking such given action or pursuing the desired result.

“Completion Certificate(s)” has the meaning as set forth in the EPC Agreement, or if no such term exists in the EPC Agreement, a certificate setting forth the Completion Milestone to which the Completion Certificate relates, and setting forth in reasonable detail the basis on which Seller believes that such Completion Milestone has been achieved, and including any supporting materials, documents and calculations, and the results of all testing, in each case to the extent reasonably necessary to support that such Completion Milestone has been achieved and which

shall include a punch list for such Completion Milestone (and in the case of Substantial Completion, the Punch List).

“Completion Milestone” means each of Mechanical Completion, Substantial Completion and Final Completion.

“Confidential Information” has the meaning set forth in Section 13.6.1.

“Consent” means consents, approvals, exemptions, waivers, authorizations, filings, registrations, and notifications.

“Construction, Alteration, or Repair” has the meaning set forth in Treasury Regulation Section 1.45-7(d)(3) (as may be amended, restated or clarified) applicable to the Prevailing Wage and Apprenticeship Requirements.

“Construction Costs” means the aggregate of any and all costs and expenses incurred or accrued by or on behalf of Seller or any of its Affiliates to site, design, develop, engineer, procure, supply, construct, interconnect, permit, startup, commission, test, or finance the Project or any parts or components thereof or materials used therein (including the Project Assets), in each case, in order for the Project (including the Project Assets) to achieve Substantial Completion and Final Completion, including all amounts owing under the Project Contracts to achieve Substantial Completion and Final Completion; provided, however, Construction Costs shall not include any augmentations, repairs, warranty, or costs for any other Work arising after Final Completion; provided, further, however, that Section 5.15 of this Agreement and the procedures thereunder shall apply to any “Construction Costs” owed under the EPC Agreement that are the result of any Change Order.

“Contract” means any written agreement, lease, license (other than a Permit), note, bond, evidence of Indebtedness, mortgage, indenture, security agreement, purchase order, binding bid, or other instrument or contract.

“Contractor” means any Person who enters into or is otherwise a party to a Contract and performs work within the scope of such Contract.

“Credit Requirements” means, with respect to a Person, the following requirements: (i) either the long-term credit rating (long-term senior unsecured debt) of such Person satisfies one of the following three rating requirements: (a) “Baa3” or higher by Moody’s, (b) “BBB-” or higher by S&P, or (c) BBB- or better by Fitch; or, if no such rating exists, the Person satisfies Purchaser’s credit eligibility requirements based on the Person’s most recent three years of audited financial statements; or (ii) if no such rating exist, will determine credit eligibility using the most recent three years of audited financial statements using its internal review process consistent with wholesale counterparty arrangements.

“Curative Actions” means Seller’s affirmative actions, including obtaining Curative Documents, curing an Initial Title Objection or Closing Date Title Objection, as applicable, by modifying the Project such that the applicable Initial Title Objection or Closing Date Title Objection (a) does not have, and would not reasonably be expected to have, a material adverse effect on the development, permitting, construction, operation, use, or maintenance of the Project,

including the cost of operation and maintenance of the Project, and (b) does not have, and would not reasonably be expected to have, a material adverse effect on the capacity, availability, operations, reliability, schedule, or safety (including safety of construction) of the Project.

“Curative Documents” means all instruments, agreements, and other documents, obtained by Seller in order to cause the Title Company to extend title coverage with respect to the Project Site over Initial Title Objections or Closing Date Title Objections, as applicable.

“Default Transfer” has the meaning set forth in Section 7.2.2(c).

“Delay LDs” has the meaning set forth in Section 5.9.1.

“Delay LD Cap” has the meaning set forth in Section 12.3.

“Disclosure Items” has the meaning set forth in Section 5.8.1.

“Dispute Period” has the meaning set forth in Section 8.3.2.

“Easements” means easements, rights-of-way, licenses, occupancy or encroachment permits, or similar entitlements which are used, or to be used, for or in the development, construction, ownership, operation, use, or maintenance of the Project.

“Effective Date” has the meaning set forth in Section 2.1.1.

“Emergency” means a situation or circumstance that constitutes a risk of (a) imminent physical injury to any person on or about the Project Site, (b) an imminent negative safety impact at the Project, the Project Site, to Major Equipment, or to Transmission Provider’s transmission infrastructure, (c) an imminent material financial loss or damage to the Project, or (d) an imminent violation of applicable Law or any Project Contract.

“Employed” means, with respect to any individual, an arrangement pursuant to which such individual performs services for the Seller or any Subcontractor in exchange for remuneration, regardless of whether such individual would be characterized as an employee or an independent contractor for federal tax purposes.

“Environmental Claim” means any written notice, Claim, complaint, or Action by any Person alleging any actual or potential Liability or violation under any Environmental Law.

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

“Environmental Law(s)” means any Law pertaining to the quality of, protection of, impairment of, remediation of, or damage to the environment, including, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., (b) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401 et seq., (e) the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. § 5101 et seq., (f) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., (g) the Toxic Substances

Control Act, 15 U.S.C. §§ 2601 through 2629, (h) the Oil Pollution Act, 33 U.S.C. § 2701 et seq., (i) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (j) the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j, (k) the Federal Insecticide, Fungicide, & Rodenticide Act, 7 U.S.C. § 136 et seq., (l) the Endangered Species Act, 16 U.S.C. § 1531 et seq., (m) the Clean Water Act, 33 U.S.C. § 1251 et seq., (n) National Environmental Policy Act, 42 U.S.C. § 55 et seq., (o) the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., (p) the Bald and Golden Eagle Protection Act, (q) Archeological Resources Protection Act, 16 U.S.C. § 470aa et seq., (r) National Historic Preservation Act, 54 U.S.C. § 300101 et seq., and (s) state equivalents to items (a) through (r); provided, however, that the term “Environmental Law” shall not include any Law relating to worker health or safety matters to the extent not related to human exposure to hazardous or toxic materials, wastes, or substances.

“EPC Agreement” means an Engineering, Procurement and Construction Agreement by and between Seller and the EPC Contractor, in the form of Exhibit E.

“EPC Contractor” means the counterparty (other than Seller) to the EPC Agreement.

“Equipment Suppliers” means one of the approved contractors on Exhibit V that will be a supplier of the Project Equipment.

“Equipment Warranty and Performance Guarantees Agreement” means the Equipment Warranty and Performance Guarantees Agreement substantially and in all material respects in the form of Exhibit O attached hereto.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate(s)” means any entity that, together with a Person, would be deemed a single employer within the meaning of Code Section 414(b), (c), or (m) or ERISA Section 4001(b).

“Excluded Assets” means the items listed on Schedule 1.1(a).

“Excluded Liabilities” has the meaning set forth in Section 2.1.5(a).

“Execution Date” has the meaning set forth in the Preamble of this Agreement.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion” has the meaning set forth in the EPC Agreement.

“Final Completion Date” has the meaning set forth in the EPC Agreement.

“Firm Date” means the date on which all of the conditions listed in Section 6.3, Section 6.4 and Section 6.5 have been satisfied (or waived by the Party entitled to do so), Seller has executed and delivered the Seller Firm Date Certificate in accordance with Section 6.7 and Purchaser has executed and delivered the Purchaser Firm Date Certificate in accordance with Section 6.6.

“Firm Date Conditions” means the conditions precedent to the Firm Date set forth in Section 6.3, Section 6.4, and Section 6.5.



“Firm Date Permits” means all Permits required by applicable Law and Prudent Operating Practices for the development, design, engineering, supply, construction, installation, testing, and commissioning by Seller of the Project at the Project Site, all of which are listed on Part B of Schedule 1.1(b).

“Firm Date Reports” means the Reports listed on Schedule 1.1(c).

“Firm Date Required Consents” means the Consents listed on Schedule 1.1(d).

“Firm Transmission Agreements” means [describe transmission agreements], which are listed on Schedule 1.1(r).

“Force Majeure Delay” means, subject to Section 5.15, a delay in Seller’s ability to achieve Substantial Completion by the Guaranteed Substantial Completion Date because of a Force Majeure Event.

“Force Majeure Event” means any event or circumstance, or combination of events or circumstances, that prevents or delays a Party’s ability to perform its obligations under this Agreement, EPC Contractor’s ability to perform the Work under the EPC Agreement, or any Contractor’s ability to perform Work under a Material Project Contract, if and to the extent that: (i) such event arises after the Execution Date, (ii) such event or circumstance is not reasonably foreseeable and is not within the reasonable control, directly or indirectly, of the affected Party or Person, its Affiliates and Related Persons or the agents and employees of any of them; (iii) the Party or Person affected by such event or circumstance has used Commercially Reasonable Efforts in taking precautions and measures to (a) avoid the effect of such event on such Party or Person and (b) mitigate the consequences thereof; and (iv) such event or circumstance does not result from the affected Party’s or Person’s or its Affiliates’ and Related Persons’ negligence or fault, or the negligence or fault of any of their Representatives, or the failure of such Party or Person to perform any of its obligations under this Agreement, the EPC Agreement or a Material Project Contract, as applicable.

A Force Majeure Event shall include, provided the foregoing conditions are met, the following: invasion; drought, landslide, tornado, hurricane, tsunami, flood, earthquake, and other acts of God; fire; explosion; plague and epidemic (other than existing variants of COVID-19 as of the Effective Date); invasion, acts of terrorism, war (declared or undeclared) or other armed conflict; riot, revolution, insurrection or similar civil disturbance or commotion; acts of the public enemy; perils of sea; blockade; port closure; sabotage or vandalism; strikes and other labor disputes (including collective bargaining disputes and lockouts) except as excluded below in this definition; industrywide shortages due to a Force Majeure Event of required materials, equipment, or labor; transportation accidents; delays in transportation due to closure of roads or other transportation route by Governmental Authorities or otherwise due to a Force Majeure Event; quarantines, embargoes, and acts of expropriation.

Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a “Force Majeure Event”: (i) strikes and other labor disputes (including collective bargaining disputes and lockouts) directed exclusively at Seller, its Affiliates or Related Persons or involving Seller, its Affiliates or Related Persons, unless the strike is part of a more

widespread or general strike extending beyond such Party, Affiliate or Related Person, (ii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iii) events that affect the cost of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (v) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Governmental Authorities or otherwise due to an independent, identifiable Force Majeure Event causing such condition; (vi) actions of a Governmental Authority in respect of or in relation to or resulting from a Party's non-compliance with applicable Laws, unless resulting from the other Party's negligence or intentional misconduct or breach of its obligations hereunder; (vii) new or amended tariffs or changes in the interpretation of tariffs, (viii) any action (including a withhold release order) taken under an Anti-Forced Labor Law, whether existing as of the Effective Date or imposed or applied after the Effective Date; or (ix) COVID-19 or any actions taken as a result thereof.

"Forced Labor" means all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered him or herself voluntarily, such as any form of forced labor, child labor, indentured labor, bonded labor (including debt bondage, trafficked or slave), prison labor or trafficking in persons.

"Fundamental Purchaser Representations" means the representations and warranties set forth in Section 4.1 (Existence), Section 4.2 (Authority), Section 4.3 (Binding Agreement), and Section 4.7 (Brokers).

"Fundamental Seller Representations" means the representations and warranties set forth in Section 3.1 (Existence), Section 3.2 (Authority), Section 3.3 (Binding Agreement), Section 3.8 (Title to Project Assets), and Section 3.17 (Brokers).

"GAAP" means generally accepted accounting principles in the United States of America applied on a consistent basis.

"Governmental Authority" means any federal or state entity, authority, agency, court, tribunal, department, board, commission, or other body or political subdivision thereof, including any municipality, township, and county, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

"Guaranteed Mechanical Completion Date" means [Date], as may be extended pursuant to the terms of this Agreement.

"Guaranteed Substantial Completion Date" means [Date], as may be extended pursuant to the terms of this Agreement.

"Hazardous Materials" means: (a) any substance, emission, or material defined as or listed in any Environmental Law as a "regulated substance," "hazardous substance," "toxic substance," "pesticide," "hazardous waste," "hazardous material," "waste," "pollutant," "contaminant," or

words of similar import in any Environmental Law; or (b) any products or substances containing petroleum, friable asbestos, polychlorinated biphenyls, or radioactive materials.

“Indebtedness” means any of the following: (a) any indebtedness for borrowed money, whether secured or unsecured; (b) any obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) any obligations as lessee under capitalized leases; (d) any obligations, contingent or otherwise, under acceptances, letters of credit, or similar facilities; (e) any obligations created or arising under conditional sale or title retention agreements; (f) any net obligations payable under any rate, currency, commodity, or other swap, option, or derivative agreement; (g) any obligations secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (other than Permitted Liens); (h) any obligations to pay the deferred purchase price of property or services, except trade accounts payable, accrued compensation, or similar obligations arising in the ordinary course of business, consistent with past practice; and (i) any guaranty of any of the foregoing.

“Indemnification Claim” has the meaning set forth in Section 8.3.1.

“Indemnified Party” has the meaning set forth in Section 8.3.1.

“Indemnifying Party” has the meaning set forth in Section 8.3.1.

“Indemnity Exception” has the meaning set forth in Section 5.8.3.

“Indemnity Reduction Amounts” has the meaning set forth in Section 8.7.2.

“Independent Engineer’s Certificate” shall mean the form of certificate to be issued by the Licensed Professional Engineer (substantially in the form of Exhibit [X]), wherein the Licensed Professional Engineer shall have reviewed Seller’s certificates, supporting invoices, other evidence of payment, and any other information provided in support of Seller’s achievement of a Milestone; provided, however, that the Licensed Professional Engineer shall have confirmed all invoiced costs in excess of [\$XX].

“Initial Title Objections” has the meaning set forth in Section 5.4.1(b).

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

“Interconnection Agreement” means [describe Interconnection Agreement].

“Key Milestone(s)” means the subset of Milestones set forth on the Payment Schedule under the heading “Key Milestones.”

“Labor Hours” means the total number of hours devoted to the performance of Construction, Alteration, or Repair work by any individual Employed by the Seller or any

Subcontractor, excluding any hours worked by foremen, superintendents, owners or persons Employed in a bona fide executive, administrative or professional capacity (within the meaning of those terms in 29 CFR 541). “Laborer(s) or Mechanic(s)” means laborer or mechanic as such terms are used in Sections 45(b)(7) and (8) and 48(a)(10) and the PWA Guidance.

“Laborer(s) or Mechanic(s)” has the meaning as set forth in Treasury Regulation Section 1.45-7(d)(8) (as may be amended, restated, or clarified) applicable to the Prevailing Wage and Apprenticeship Requirements.

“Law(s)” means all applicable laws, statutes, codes, acts, treaties, ordinances, Orders (including, but not limited to, any orders issued by the Executive or Judicial branches of the United States government), judgments, writs, decrees, injunctions, rules, regulations, directives, and requirements of all Governmental Authorities (including all regulations or other requirements of a Governmental Authority that have been formally promulgated in a rulemaking proceeding but, pending final Order, is in a proposed or temporary form having force of law and immediate effect), which includes, but is not limited to, each Environmental Law.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to be a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having consolidated net worth of at least \$10 billion USD and a Credit Rating of at least A3 from Moody’s or A- from S&P or Fitch; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall be within ten (10) Business Days of expiration or termination, or shall fail or cease to be in full force and effect at any time during the Term, in any such case without replacement; (v) the issuer of such Letter of Credit shall become Bankrupt; or (vi) a merger occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned in accordance with the terms of this Agreement.

“Liability” means any Indebtedness and other obligations of a Person (whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due).

“Liability Cap” has the meaning set forth in Section 12.3.

“Licensed Professional Engineer” has the meaning given to such term in the EPC Agreement. The Licensed Professional Engineer shall be chosen from the list of independent engineers provided in Schedule 5.10.5, and any Licensed Professional Engineer listed on Schedule 5.10.5 shall be deemed approved by Purchaser for all purposes of this Agreement.

“Lien(s)” means any mortgage, pledge, deed of trust, hypothecation, assignment, deposit arrangement, charge, security interest, encumbrance, lien (statutory or other), or other security agreement of any kind or nature whatsoever, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, or any encumbrance on or exception to title of any kind or nature whatsoever, including options, leases,

easements, rights of way, licenses, tenancies, possessory interests, ownership interests, encroachments, covenants, conditions, and restrictions.

“Loss(es)” means any judgment, amount paid in settlement, damage, fine, penalty, deficiency, Liability, loss, or expense (including interest, court costs, reasonable fees and expenses of attorneys, accountants, and other experts, or other reasonable expenses of litigation or other proceedings).

“Lost Work Day(s)” means any day or any continuous four (4) hour portion thereof that Seller cannot perform its obligations under this Agreement and/or EPC Contractor cannot perform Work at the Project Site due to a Force Majeure Event or a Purchaser Caused Delay Event.

“LTSA” means the Long-Term Service Agreement in the form of Exhibit M.

“Major Equipment” means the equipment listed on Schedule 1.1(g).

“Major Subcontractors” means one of the approved contractors on Exhibit V that will be a Subcontractor to the EPC Contractor.

“Material Notification” means any notification with respect to (i) any matter under Article VII, (ii) any matter under Article XI or with respect to any dispute hereunder, (iii) the exercise of legal rights hereunder including any claim for relief resulting from a Change Event or Change Order under the EPC Agreement under Section 5.15, or (iv) with respect to any Claim or Action related hereto, including any Claim Notice under Article VIII.

“Material Project Contract” means (1) the EPC Agreement; (2) the Interconnection Agreement; (3) [reference Module/Inverter/Battery Supply Agreements]; and (4) each other Project Contract contemplating total payments in excess of five hundred thousand dollars (\$500,000).

“Mechanical Completion” has the meaning given such term in the EPC Agreement.

“Mechanical Completion Punch List” has the meaning given such term in the EPC Agreement.

“Milestone” means each of the milestones as set forth in the Payment Schedule, the completion of which entitles Seller to payment hereunder, as set forth in the Payment Schedule.

“Milestone Payments” has the meaning set forth in Section 2.2.2(a).

“Minimum Equipment Warranty Requirements” has the meaning given to such term in the EPC Agreement.

“Non-Reimbursable Damages” has the meaning set forth in Section 12.2.

“Objectionable Title Matters” means any matters shown on the Title Commitment or the ALTA Survey (other than Permitted Liens) that Purchaser has identified as requiring cure.

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

“OPUC” means the Oregon Public Utility Commission.

“Order” means any binding order, writ, judgment, injunction, decree, stipulation, determination, or award of any Governmental Authority, whether legally binding or otherwise resulting in impacts to a Governmental Authority that cause material cost increases or schedule delays for the Project.

“Organizational Documents” means with respect to any Person, the certificate or articles of incorporation, organization, or formation and by-laws, the limited partnership agreement, the partnership agreement, the limited liability company operating agreement, or the trust agreement, or such other organizational documents of such Person.

“Other Contractors” has the meaning set forth in Section 5.11.1.

“Other Milestones” means the subset of Milestones set forth on the Payment Schedule under the heading “Other Milestones.”

“Outside Closing Date” means [DATE], as may be extended pursuant to the terms of this Agreement.

“Outside Effective Date” means [DATE].

“Outside Firm Date” means [DATE].

“Outstanding Title Exception(s)” has the meaning set forth in Section 5.4.3.

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

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

“Party” and “Parties” have the meanings set forth in the Preamble of this Agreement.

“Payment Schedule” means the Payment Schedule attached hereto as Exhibit N.

“Permits” means registrations, permits, licenses, authorizations, consents, approvals, grants, franchises, variances, certificates of authority, letter rulings, or similar rights and privileges granted by or obtained from any Governmental Authority.

“Permitted Exceptions” has the meaning set forth in Section 5.4.4.

“Permitted Liens” means: (a) those Liens set forth in Schedule 1.1(e); (b) zoning, entitlement, conservation restriction, and other land use and environmental regulations by any Governmental Authority; (c) Liens for Taxes and other governmental charges and assessments which are not yet due and payable; (d) mechanics’, carriers’, workers’, repairers’, construction liens and other similar Liens arising or incurred in the ordinary course of business, which are not

yet due and payable or are and remain fully bonded over; (e) any Liens approved or consented to in writing by Purchaser; (f) any Lien that is (or will be) released on or prior to Closing, including Liens granted to the lenders in respect of the development or construction of the Project; (g) easements or reservations in respect of any of property for the purpose of rights-of-way and similar purposes, reservations, restrictions, covenants, party wall agreements, conditions of record, and other encumbrances (other than to secure the payment of money) and minor irregularities or deficiencies in the record evidence of title, which in the aggregate will not materially interfere with the proper operation and development of the property affected thereby; (h) Liens created as a result of Purchaser's failure to pay amounts that are due and payable under this Agreement or any Ancillary Agreement excluding any amounts which are the subject of a good faith dispute while such dispute is pending, provided Seller remains responsible for (and Permitted Liens specifically excludes) liens for amounts in excess of the Purchase Price due and payable from time to time in accordance with this Agreement; and (i) any Permitted Exception.

"Permitted Update Matter(s)" means, unless notice to or the consent of Purchaser is otherwise required under this Agreement: (a) any new or updated Project Real Property Agreements with the existing parties that are substantially and in all material respects "in the form of" the applicable Project Real Property Agreements existing and scheduled as of the Execution Date; (b) any Contract, matter, or other item that constitutes an Excluded Liability; or (c) any instruments, Contracts, and documents entered into in accordance with Section 5.4.

"Person(s)" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority, or any other form of entity.

"Placed In Service" means "placed in service" for purposes of Sections 45 or 168 of the Code.

"Planned Project Size" means [Project Size] or such other amount as the Parties may mutually agree in writing in their sole discretion.

"Point of Interconnection" has the meaning set forth in the Transmission Service Agreement.

"Post-Closing Purchaser Rights" has the meaning set forth in Section 2.6.4(b).

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

"Post-Closing Taxes" means any Taxes, other than Purchaser Taxes, imposed on or with respect to the Project or the Project Assets attributable to any Post-Closing Tax Period.

"Pre-Closing Books and Records" has the meaning set forth in Section 2.6.2(a).

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

“Pre-Closing Taxes” means any Taxes, other than Seller Income Taxes, imposed on or with respect to the Project, the Project Assets, or Seller attributable to any Pre-Closing Tax Period.

“Prevailing Wage and Apprenticeship Requirements” means (i) the prevailing wage requirements set forth in Code Section 45(b)(7)(A) (or any analogous provisions of Code Sections 45Y, 48, or 48E) and the PWA Guidance; and (ii) the apprenticeship requirements set forth in Code Section 45(b)(8) (or any analogous provisions of Code Sections 45Y, 48, or 48E) and the PWA Guidance.

“Prevailing Wage Term” means the period commencing on the Effective Date and ending on the earlier to occur of: (a) the last day on which Work is required to be performed by Seller under this Agreement; or (b) the Final Completion Date.

“Project” means the [description of the project] project consisting of the Project Assets and located on the Project Site.

“Project Assets” means all assets, properties, rights, and interests of every kind, nature, character, and description (whether real, personal, or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site), owned or leased by, or licensed to, Seller and its Affiliates as of the Closing Date, in each case, which relate to or are used or held for use in connection with the development, construction, operation, maintenance, repair, ownership, or use of the Project (other than the Excluded Assets), including:

- (a) the Books and Records;
- (b) the Firm Transmission Agreements;
- (c) the Project Contracts;
- (d) the Project Real Property Agreements;
- (e) the Project Equipment;
- (f) the Project Improvements;
- (g) the Project Intellectual Property;
- (h) the Project Permits (other than the Purchaser Permits);
- (i) the Reports;
- (j) the Interconnection Agreement (but only if Seller is a party thereto); and
- (k) the Transmission Service Agreement.

“Project Contracts” means all Contracts to which Seller or its Affiliates (if any) is a party with respect to the Project, the Project Assets, or the transactions contemplated under this Agreement, including the Material Project Contracts, but excluding (i) any Contracts solely constituting Excluded Liabilities or Excluded Assets and (ii) the Project Real Property Agreements, all of which are listed on Schedule 1.1(f).

“Project Equipment” means all equipment and other tangible personal property related to, used or held for use by Seller for or in connection with the development, construction, operation, maintenance, repair, ownership, or use of the Project, including the Spare Parts and all other equipment and property up to the high voltage dead-end structure in the Project substation, but excluding the Excluded Assets, in each case, whether located at or a deliverable to the Project Site, all of which are listed on Schedule 1.1(g).



“Project Facilities” means the Project Equipment and the Project Improvements comprising the Project.

“Project Improvements” means all buildings, structures, fixtures, access roads, and other improvements located at or on the Project Site that will comprise the Project, and Project Assets (including the operation and maintenance building and other improvements made pursuant to this Agreement, the material components of which are listed on Schedule 1.1(h).

“Project Intellectual Property” shall have the meaning set forth in Section 3.18.

“Project Permits” means all Permits required by applicable Law and Prudent Operating Practices for the development, design, engineering, supply, construction, installation, testing, commissioning, operation, maintenance, repair, ownership, and use of the Project at the Project Site, all of which are listed on Part A of Schedule 1.1(b).

“Project Personal Property” has the meaning set forth in Section 3.8.

“Project Real Property Agreements” means all Contracts, instruments, leasehold or sub-leasehold, Easements, and any other interest in real property, including any Contracts for real property rights granted by the State of Oregon or any other Governmental Authority (including any option to acquire the same), and all amendments, assignments, and modifications thereto, and all schedules and exhibits attached thereto, entered into with landowners and which comprise the Project Site, to which Seller or its Affiliates (if any) is a party or by which Seller or its Affiliates (if any) or any of the Project Assets are bound, and that grant, convey, assign, or otherwise affect real property interests relating to the Project Site, all of which are listed on Schedule 1.1(i).

“Project Schedule” means the Work schedule setting forth certain stages or elements of the Work and describing the estimated time of completion by Seller of such stages and elements including meeting the Firm Date and Completion Milestones, as set forth in Schedule 1.1(m), subject to changes as permitted by this Agreement.

“Project Site” means the real property upon which the Project will be located, as further described on Schedule 1.1(j).

“Project Site Plan” means the site layout for the Project, including the intended location of each of the Project Facilities as depicted in Exhibit A, Attachment 1 to the EPC Agreement.

“Prudent Operating Practices” means, with respect to the Project during a particular period, (a) the practices, methods, and acts engaged in or approved by a significant portion of developers, owners, and operators involved in utility scale [solar/wind generation] [energy storage] projects in the United States, in a similar geographic location, and of similar scope, nature, and technology as the Project during such period, or (b) any practices, methods, and acts, which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, would be expected by a significant portion of developers, owners, and operators involved in utility scale [solar/wind generation] [energy storage] projects in the United States, in a similar geographic location, and of similar scope, nature, and technology, to accomplish the desired result in a manner consistent with applicable Law, reliability, safety, environmental protection, economy, and expedition, the Project Contracts, the Project Real Property Agreements and any other Contracts affecting the

development, permitting, construction, ownership, use, operation, and maintenance of the Project. “Prudent Operating Practices” does not mean the best practice, method, technique, or standard of care, skill, safety, and/or diligence in all cases and is not intended to be limited to optimum practices, methods, techniques, or standards, to the exclusion of others, but is instead intended to encompass a range or spectrum of reasonable and prudent practices, methods, techniques, and standards, employed by such developers, owners, and operators, in the development, ownership, or operation of facilities similar to the Project.

“Punch List” has the meaning given to such term in the EPC Agreement.

“Punch List Holdback Amount” has the meaning given to such term in the EPC Agreement.

“Punch List Item(s)” means the items listed on the Punch List.

“Purchase Price” has the meaning set forth in Section 2.2.1.

“Purchaser” has the meaning set forth in the Preamble of this Agreement.

“Purchaser Caused Delay” means a delay in or prevention of Seller’s performance of its obligations under this Agreement, the EPC Contractor’s performance of its obligations under the EPC Agreement, an Equipment Supplier’s performance of its obligations under any Material Project Contract, and Seller’s, the EPC Contractor’s, and/or an Equipment Supplier’s ability to achieve Substantial Completion by the Guaranteed Substantial Completion Date, because of a Purchaser Caused Delay Event.

“Purchaser Caused Delay Event” means any event or circumstance, or combination of events or circumstances, that prevents or delays Seller’s ability to perform its obligations under this Agreement, EPC Contractor’s ability to perform the Work under the EPC Agreement, and/or an Equipment Supplier’s performance of its obligations under any Material Project Contract, if and to the extent that such event or circumstance is caused by Purchaser’s (or its permitted representatives’): (i) failure to comply with the Purchaser Access and Communications Protocol attached as Exhibit [XX] to the EPC Agreement, (ii) Purchaser’s failure to perform its obligations hereunder, including payment of the Purchase Price to Seller, or (iii) Purchaser’s failure to comply with its responsibilities under the Transmission Service Agreement, to the extent Purchaser is a Party, or Interconnection Agreement (and in the case of the Interconnection Agreement, following (A) Seller’s assignment of the Interconnection Agreement or rights thereunder to Purchaser or (B) Purchaser otherwise becoming a Party to the Interconnection Agreement). Purchaser Caused Delay shall not include any delay caused by acts or omissions of the Licensed Professional Engineer, unless such acts or omissions are directly caused by a Purchaser Caused Delay.

“Purchaser Default Termination Payment” has the meaning set forth in Section 7.2.2(d).

“Purchaser Firm Date Certificate” has the meaning set forth in Section 6.6.

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

“Purchaser Material Adverse Effect” means a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or any Ancillary Agreement to which it is a party or to complete the transactions contemplated hereby or thereby.

“Purchaser Non-Fault Event” means, in the case of termination of this Agreement pursuant to Section 7.1.6 (Firm Date) or Section 7.1.7 (Outside Substantial Completion Date), if such termination is solely the result of the failure to satisfy the Firm Date Condition in Section 6.3.2 (Certain Consents) and the Closing Date Condition in Section 6.1.4 (Required Approvals), as applicable, and such failure is not the result of Purchaser’s failure to fulfill in any material respect any obligation, agreement, or covenant under this Agreement required to be fulfilled by Purchaser on or prior to the Closing Date or Firm Date, as applicable.

“Purchaser Permits” means the Project Permits required by applicable Law and Prudent Operating Practices to be obtained by Purchaser in connection with the development, design, engineering, supply, construction, installation, testing, commissioning, operation, maintenance, repair, ownership, and use of the Project at the Project Site (except for any Permits required as a result of the specific legal, regulatory, or financial status of Purchaser or its Affiliates, or as a result of any other facts or circumstances that specifically relate to the business or activities in which Purchaser or its Affiliates are or proposed to be engaged), all of which are listed on Part C of Schedule 1.1(b).

“Purchaser Taxes” means any Taxes imposed on or attributable to Purchaser or Affiliate of Purchaser (other than Pre-Closing Taxes) whether arising prior to, on or after the Closing Date.

“Purchaser’s Consents” has the meaning set forth in Section 4.4.2.

“Purchaser’s Disclosure Schedule” means the Schedules prepared by Purchaser and delivered to Seller in conjunction with the execution of this Agreement.

“Purchaser’s Knowledge” means the actual knowledge of the Persons listed on Schedule 1.1(k) or of any successors to their roles with respect to the Project after reasonable review of files and other information in such Person’s possession and after reasonable inquiry of employees of Purchaser or its applicable Affiliates who have primary responsibilities pertinent to such inquiry.

“PWA Guidance” means (i) the prevailing wage requirements described in Treasury Regulation Section 1.45-7 (as may be amended, restated or clarified), and any regulation, guidance, or interpretation promulgated or issued by the U.S. Department of Labor or the U.S. Department of the Treasury with respect thereto as applicable to a credit under Code Sections 45, 45Y, 48, or 48E (ii) and the apprenticeship requirements in Treasury Regulation Section 1.45-8 (as may be amended, restated or clarified), and any regulation, guidance, or interpretation with respect promulgated or issued by the U.S. Department of Labor or the U.S. Department of the Treasury with respect thereto as applicable to a credit under Code Sections 45, 45Y, 48, or 48E.

“PWA Requirements Certificate” has the meaning set forth in the EPC Agreement.

“Qualified Apprentice” means an individual who is Employed by the Seller, EPC Contractor, or any of its Subcontractors and who is participating in a Registered Apprenticeship Program.

“Registered Apprenticeship Program” means an apprenticeship program registered under the National Apprenticeship Act (29 U.S.C. 50 et seq.) that meets the standards of subpart A of part 29 and part 30 of title 29, Code of Federal Regulations, or as otherwise defined under Treasury Regulation Section 1.45-8(g)(4) (as may be amended, restated or clarified).

“Related Person(s)” means with respect to each Party, its Affiliates, and the employees, officers, and directors of such Party and its Affiliates.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, seeping, or disposing to the environment (including the abandonment or discarding of barrels, containers, and receptacles containing Hazardous Materials).

“Remedial Action Plan” has the meaning set forth in Section 5.5.5.

“Remediation” means actions required under Environmental Laws or by a Governmental Authority, or a Claim by a third party against a Purchaser Indemnified Party, in each case to address an Environmental Condition, including any monitoring, investigation, assessment, characterization, treatment, cleanup, containment, removal, mitigation, response, or restoration work.

“Repair or Alteration” means alteration or repair work as such terms are used in Code Sections 45(b)(7) and (8) and 48(a)(10) and any PWA Guidance.

“Reports” means (a) all final, or if no final version exists then the last available version of, material third party reports, studies, analyses, and tests (and all amendments and supplements thereto) prepared for, or commissioned by, and delivered to, Seller or any of its Affiliates that relate to the Project, including the Project Assets, or the Project Site, including Phase I environmental assessments, environmental impact studies, geotechnical studies, transportation studies, cultural resources studies, transmission or interconnection studies, including interconnection system impact studies, wildlife studies, studies or analysis of or reports on the environmental condition of the Project Site or compliance by the Project or the Project Site with Environmental Laws, Federal Aviation Administration analyses, state department of transportation analyses, zoning studies, visual impact studies, and wetlands studies, and (b) all Reports delivered to Purchaser pursuant to Section 5.10, including Additional Reports.

“Representatives” means, as to any Person, its officers, directors, employees, agents, partners, members, stockholders, counsel, accountants, investment bankers, engineers, consultants, lenders or prospective lenders, party (or prospective party) providing financing to the Project (including tax equity financing, if any), and other representatives or advisors; provided that in no event shall Seller or any Affiliate of Seller be a Representative of Purchaser for purposes of this Agreement.

“Required Approvals” means the Consents set forth on Schedule 1.1(l).

“Retained Information” has the meaning set forth in Section 2.6.2(b).

“ROFO Negotiation Period” has the meaning set forth in Section 7.1.11(b).

“ROFO Notice” has the meaning set forth in Section 7.1.11(b).

“ROFO Offer” has the meaning set forth in Section 7.1.11(b).

“ROFO Period” has the meaning set forth in Section 7.1.11(b).

“Schedule” or “Schedules” means one or more of the disclosure schedules attached hereto.

“Seller” has the meaning set forth in the Preamble to this Agreement.

“Seller Default Termination Payment” has the meaning set forth in Section 7.2.2(b).

“Seller Firm Date Certificate” has the meaning set forth in Section 6.7.

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

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

“Seller Material Adverse Effect” means any change or changes that, individually or in the aggregate, has, or would reasonably be expected to have, a material adverse effect on: (a) the business, assets, operations, property, or condition of Seller; (b) the business, assets, operations, construction, ownership, value, use, or condition of the Project or the Project Assets; or (c) the ability of Seller to perform its obligations under this Agreement or the Ancillary Agreements to which Seller is a party or to complete the transactions contemplated hereby; provided, however, that, except to the extent caused by Seller or its Affiliates, none of the following will constitute or be deemed to contribute to a Seller Material Adverse Effect, or will otherwise be taken into account in determining whether a Seller Material Adverse Effect has occurred or would reasonably be expected to occur: (i) any changes resulting from general economic or regulatory conditions; (ii) any changes generally affecting the international, national, regional, state, or local electric generating, transmission, or distribution industry; (iii) any changes generally affecting international, national, regional, state, or local wholesale or retail markets for electric power, including those due to actions by competitors and regulators; (iv) any changes generally affecting the [solar/wind generation] [energy storage] industry; (v) any changes in political conditions, including any engagements of hostilities, acts of war or terrorist activities; (vi) any changes generally affecting international, national, regional, state, or local electric transmission or distribution systems; (vii) any changes generally affecting the markets for or costs of commodities or supplies, including fuel; (viii) any changes generally affecting markets for or costs of electricity; (ix) any changes in tariffs, Law or regulatory policy or the interpretation or enforcement thereof; (x) any changes or adverse conditions in the financial, banking, or securities markets, in each case, including any disruption thereof and any decline in the price of any security or any market index; (xi) any changes in GAAP or other applicable accounting and auditing standards or industry standards; (xii) any labor strikes, requests for representation, organizing campaigns, work stoppages, slowdowns, or other labor disputes; (xiii) any new generating facilities and their effect

on pricing or transmission; (xiv) the announcement, negotiation, pendency, execution, or delivery of this Agreement or the consummation of the transactions contemplated hereby, including the identity of, or the effect of any fact or circumstance relating to, Purchaser or any of its Affiliates or any communication by Purchaser or any of its Affiliates regarding plans, proposals, or projections with respect to the Project or Project Assets (including any impact on the relationship of the Project, contractual or otherwise, with customers, suppliers, distributors, vendors, lenders, employees, or partners); (xv) any actions or omissions required to be taken or not taken by Seller in accordance with this Agreement, the Project Contracts, or the Project Real Property Agreements or requested, or consented to, by Purchaser or any of its Affiliates; (xvi) any breach, violation or non-performance of any provision of this Agreement by Purchaser or any of its Affiliates (subject to applicable notice and cure rights); (xvii) any changes in or effects on the Project Assets which are cured (including the payment of money) by Seller or its Affiliates; (xviii) failure by Seller to meet any projections or forecasts for any period occurring on or after the date hereof; or (xix) any change, event, occurrence, or development covered hereunder as an Excluded Liability; provided, further, that the matters referred to in clauses (i) through (iv) above may constitute or be deemed to contribute to a Seller Material Adverse Effect, and may otherwise be taken into account in determining whether a Seller Material Adverse Effect has occurred to the extent such matter has a materially disproportionate adverse effect on the Project or the Project Assets as compared with other [solar/wind][energy storage] development projects of similar size, scope, and in a similar geographic region.

“Seller Non-Fault Event” means, in the case of termination of this Agreement pursuant to Section 7.1.6 (Firm Date) or Section 7.1.7 (Outside Substantial Completion Date), if such termination is solely the result of the failure to satisfy the Firm Date Condition in Section 6.3.2 (Certain Consents), or the Closing Date Condition in Section 6.2.4 (Required Approvals), as applicable, and such failure is not the result of Seller’s failure to fulfill in any material respect any obligation, agreement, or covenant under this Agreement required to be fulfilled by Seller on or prior to the Closing Date or Firm Date, as applicable.

“Seller’s Disclosure Schedule” means the Schedules prepared by Seller and delivered to Purchaser in conjunction with the execution of this Agreement.

“Seller’s Full Cost” has the meaning set forth in Section 7.2.2(a).

“Seller’s Letter of Credit” means one or more irrevocable, standby letters of credit (in substantially and in all material respects the same form and substance as set forth in Exhibit A-1 or as otherwise reasonably acceptable to Purchaser) in the amount of [Amount] Dollars ([XXX]). issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from the statistical rating business of S&P or Fitch or A3 from Moody’s, and a consolidated net worth of at least Ten Billion Dollars (\$10,000,000,000). The costs of a Seller’s Letter of Credit shall be borne by Seller.

“Seller’s Consents” has the meaning set forth in Section 3.4.2.

“Seller’s Disclosure Schedule” means the Schedules prepared by Seller and delivered to Purchaser in conjunction with the execution of this Agreement.

“Seller’s Invoice” has the meaning given to it in Section 2.2.4(e).

“Seller’s Knowledge” means the actual knowledge of the Persons listed on Schedule 1.1(o) or of any successors to their roles with respect to the Project after reasonable review of files and other information in such Person’s possession or control and after reasonable inquiry of employees of Seller or its applicable Affiliates who have primary responsibilities pertinent to such inquiry.

“Settlement” has the meaning set forth in Section 8.3.2.

“Settlement Agreement” has the meaning set forth in Section 11.1.

“Spare Parts” means the recommended spare parts identified in the EPC Agreement.

“Subcontractor” has the meaning given to such term in the EPC Agreement.

“Subcontract” has the meaning given to such term in the EPC Agreement.

“Substantial Completion” has the meaning given such term in the EPC Agreement.

“Surveyor” means [Surveyor Name].

“Tax” or “Taxes” means any and all taxes, including any interest, penalties, or other additions to tax that may become payable in respect thereof, imposed by any foreign, federal, state, or local government or any agency or political subdivision of any such government, which taxes shall include all income taxes, profits taxes, taxes on gains, alternative minimum taxes, estimated taxes, payroll and employee withholding taxes, unemployment insurance taxes, social security taxes, welfare taxes, disability taxes, severance taxes, license charges, taxes on stock, sales and use taxes, ad valorem taxes, value added taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real or personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers’ compensation taxes, and other taxes, fees, duties, levies, customs, tariffs, imposts, assessments, obligations, and charges of the same or of a similar nature to any of the foregoing.

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

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

“Technical Specifications” means the technical specifications set forth in the EPC Agreement.

“Third Party Claim” has the meaning set forth in Section 8.3.1.

“Title Commitment” means a preliminary title commitment or report of condition of title to be prepared by the Title Company with respect to each parcel of real property comprising the Project Site or that is the subject of a Project Real Property Agreement.

“Title Company” means [Title Company Name].

“Title Objection Letter” has the meaning set forth in Section 5.4.1(b).

“Title Policy” means a fully paid ALTA owner’s policy of title insurance issued by the Title Company as of the Closing Date, at Seller’s cost and expense, in an amount of no less than the Purchase Price, insuring Purchaser’s title and interest in each parcel of real property comprising the Project Site and all of the real property that is the subject of a Project Real Property Agreement, including real property upon which Project Facilities are or will be located, that (i) shall be subject only to standard printed exceptions contained in the promulgated form of ALTA owner’s title policy, Permitted Liens, and such other title exceptions as may be acceptable to Purchaser, (ii) includes all affirmative coverage and endorsements in favor of Purchaser as may be requested by Purchaser, including, title endorsements ALTA 17-06 (Access), ALTA 19-06 (Contiguity), ALTA 25-06 (Same as Survey), ALTA 36-06 (Energy Project – Leasehold / Easement), or similar state approved versions available in the State of Oregon and (iii) otherwise in form and substance satisfactory to Purchaser.

“Transmission Provider” means [name of Transmission Provider].

“Transmission Service Agreement” means [transmission agreement description].

“Update” has the meaning set forth in Section 5.8

“Updated ALTA Survey” has the meaning set forth in Section 5.4.2.

“Updated Title Commitment” has the meaning set forth in Section 5.4.2.

“Work” has the meaning given to such term in the EPC Agreement.

## **1.2 Rules as to Usage.**

Except as otherwise expressly provided herein, the following rules apply to the usage of terms in this Agreement:

(a) The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined. If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb).

(b) “Include,” “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.

(c) “Writing,” “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.



(d) Any Law defined or referred to herein means such Law as from time to time amended, modified, or supplemented, including by succession of comparable successor Law and any rules and regulations promulgated thereunder.

(e) References to a Person are also to its permitted successors and assigns, and in the case of any Governmental Authority, to any Person(s) succeeding to its functions and capacities.

(f) “Hereof,” “herein,” “hereunder,” and comparable terms refer, unless otherwise expressly indicated, to this Agreement (including the Exhibits and Schedules of this Agreement) in its entirety and not to any particular article, section, or other subdivision thereof or exhibit or schedule or other attachment thereto. References in an instrument to “Article,” “Section” or another subdivision or to an exhibit, schedule, or other attachment are, unless the context otherwise requires, to an article, section, subsection, or subdivision of or an exhibit or schedule or other attachment to this Agreement.

(g) Pronouns, whenever used in any agreement or instrument that is governed by this Agreement and of whatever gender, shall include all Persons. References to any gender include, unless the context otherwise requires, references to all genders.

(h) When expressing an obligation of a Person, the words “shall” and “will” have equal force and effect.

(i) Whenever the consent or approval of any Party is required pursuant to this Agreement, unless expressly stated that such consent or approval is to be given in the sole discretion of such Party, such consent or approval shall not be unreasonably withheld, conditioned, or delayed; provided, however, such consent or approval shall not be required if and to the extent that the requirement of such consent or approval would violate any applicable Law. It is agreed that, even though the foregoing general rule of construction would obviate the need for such qualification, if a particular consent or approval required pursuant to this Agreement nevertheless contains a qualification to the effect of not to be unreasonably withheld, or conditioned, or delayed (or any or all of the foregoing qualifiers), such qualification in such instance will not affect the application of the foregoing general rule of construction on any instance of a consent or approval in this Agreement not so qualified.

(j) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken, without penalty, on or by the next day that is a Business Day.

(k) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP as applied to the accounting entity to which they refer.

(l) Regarding the determination of any period of time, “from” means “including and after,” “to” means “to but excluding,” and “through” means “through and including.”

(m) Any representation or warranty contained herein as to the enforceability of a Contract (including this Agreement) is subject to the effect of any Bankruptcy, insolvency, reorganization, moratorium, or other similar Law affecting the enforcement of creditors' rights generally and to general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(n) All monetary figures are of United States dollars unless otherwise specified.

### **1.3 Schedules and Exhibits.**

This Agreement consists of the Articles contained herein and the Schedules and Exhibits attached hereto, all of which comprise part of one and the same agreement with equal force and effect.

### **1.4 No Construction Against Drafter.**

Each Party acknowledges that it was represented by counsel in connection with this Agreement and the Exhibits, Schedules, and other documents relating hereto, and that it or its counsel reviewed and revised this Agreement and such other Exhibits, Schedules, and documents, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any of the other Exhibits, Schedules, or documents relating hereto

## **ARTICLE II PURCHASE AND SALE; PURCHASE PRICE; CLOSING**

### **2.1 Effective Date; Purchase and Sale; Excluded Assets; Excluded Liabilities; Assumed Liabilities.**

2.1.1 Effective Date. This Agreement shall be effective on the date (the "Effective Date") that is the later of: (a) the date that Seller provides written notice to Purchaser that Seller has obtained all required corporate or limited liability company approvals (including but not limited to approvals of its executive management and Board of Directors) to consummate the transactions contemplated by this Agreement; and (b) the date that Purchaser provides written notice to Seller that Purchaser has obtained all required corporate approvals (including but not limited to approvals of its executive management and Board of Directors) to consummate the transactions contemplated by this Agreement. The Parties expect the Effective Date to occur on or before the Outside Effective Date, provided that the Outside Effective Date may be extended upon the mutual agreement of the Parties. In the event that the Parties do not mutually agree to extend the Outside Effective Date and the Effective Date has not occurred, then Section 7.1.10 shall apply.

2.1.2 Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, transfer, convey, assign, and deliver to Purchaser, free and clear of all Liens (other than Permitted Liens), and Purchaser shall purchase, acquire, and pay for, all of Seller's right, title, and interest in and to the Project Assets, but not the Excluded Assets.

2.1.3 Assignment and Assumption. On the terms and subject to the conditions set forth in this Agreement, simultaneous with the Closing, Seller shall assign to Purchaser, and Purchaser shall accept and assume the following rights and obligations from Seller: (a) all of Seller's rights under the Project Contracts, Project Permits, and Project Real Property Agreements; and (b) all of Seller's obligations arising under the Project Contracts, Project Permits (including payments owed and arising post-Closing under the Project Permits), and Project Real Property Agreements, solely to the extent such obligations arise after the Closing and do not constitute Liabilities (i) arising out of any failure to perform, improper performance, breach, default, or violation by Seller or any of its Affiliates (or any Person acting on behalf of Seller or any of its Affiliates) prior to the Closing; or (ii) arising or accruing on, prior to, or after the Closing relating to Construction Costs. Additionally, Seller shall ensure Purchaser is listed as a limited third-party beneficiary in the EPC Agreement as of the execution date of the EPC Agreement (and solely with respect to Purchaser's third-party rights and benefits expressly stated therein). Notwithstanding the assignment contemplated by this Section 2.1.3, Purchaser hereby appoints Seller as its agent for purposes of the continued performance of the supervision, administration, coordination, and management services required under the assigned Project Contracts, Project Permits and Project Real Property Agreements through Final Completion (including making all payments required thereunder when due) in accordance with Section 2.6.4; provided, however, in the event that: (1) this Agreement is terminated under Article VII for a reason set forth in Section 7.1; and (2) Purchaser elects to exercise its step-in rights set forth in this Agreement, then Purchaser may elect, in its sole discretion, to: (aa) terminate Seller's authority to act on Purchaser's behalf under this Section 2.1.3; and (bb) make payments directly to the EPC Contractor or any Project Contractor, with any such direct payment to be credited against amounts otherwise due to Seller under this Agreement or reimbursed to Purchaser by Seller.

2.1.4 Excluded Assets. Seller shall have no obligation to, and does not, transfer any interest or rights in the Excluded Assets, and Purchaser shall have no Liability with respect thereto. The Parties acknowledge and agree that Seller shall have the right on or prior to the Closing Date to retain or to transfer and assign to one or more of its Affiliates its interests in the Excluded Assets without making, giving, or obtaining Consent to or from Purchaser.

2.1.5 Excluded Liabilities; Assumed Liabilities.

(a) Excluded Liabilities. Except for the Assumed Liabilities, Purchaser will not assume and will not be responsible to pay, perform, satisfy, or discharge when due any of the following Liabilities of Seller or any of its Affiliates, whether such Liabilities arise or are asserted before, at, or after the Closing (collectively, the "Excluded Liabilities"), and all such Excluded Liabilities will remain the exclusive responsibility of Seller or its applicable Affiliates:

(i) all Liabilities that have arisen or may arise with respect to: (A) any employee benefit plan, employment agreement, or other arrangement of Seller, any Affiliate of Seller or any of their respective ERISA Affiliates providing any type of compensation to any former or current employee of Seller, any Affiliate of Seller, or any of their respective ERISA Affiliates, including any obligation or Liability for providing continuation coverage under and complying with Section 4980B of the Code, Sections 601 through 608 of ERISA, and any applicable state Law of similar intent with respect to any individual who either prior to, on or after the Closing Date was covered under any group health plan contributed to or maintained by Seller,

any Affiliate of Seller, or any of their respective ERISA Affiliates, or who will otherwise be an “M&A Qualified Beneficiary” (as such phrase is defined in Treasury Regulation Section 54.4980B-9, Q&A-4) in connection with the transactions contemplated by this Agreement; and (B) any current or former employee, independent contractor, or consultant of Seller, any Affiliate of Seller, or any of their respective ERISA Affiliates;

(ii) all Liabilities of Seller and any of its Affiliates relating to, resulting from, or arising out of the Project Contracts or Project Real Property Agreements not expressly assumed by Purchaser pursuant to Section 2.1.3, and all Liabilities relating to, resulting from, or arising out of Contracts relating to the Project, the Project Assets, or the Project Site which are not Project Contracts or Project Real Property Agreements;

(iii) all Liabilities of Seller and any of its Affiliates under the Project Permits (other than Purchaser Permits) not expressly assumed by Purchaser pursuant to Section 2.1.3, and all Liabilities under Permits relating to the Project, the Project Assets, or the Project Site which are not Project Permits;

(iv) all Liabilities arising or accruing on, prior to, or after the Closing relating to Construction Costs;

(v) all Pre-Closing Taxes and Seller Income Taxes with respect to the transfer of the Project Assets pursuant to this Agreement;

(vi) all Liabilities in any way relating to, resulting from, or arising out of any Excluded Assets; and

(vii) any Liability relating to, resulting from, or arising out of any portion of the Project Assets with respect to which Project Substantial Completion has not occurred, unless and until the Final Completion Date occurs with respect thereto.

(viii) to the extent caused by the acts or omissions of Seller or its agents or Contractors, any Liability arising under any Environmental Law and out of (a) the ownership or development of the Project by Seller or its agents or Contractors prior to the Closing or (b) the ownership, operation or condition of the Real Property or any other real property currently or formerly owned, operated or leased by Seller related to the Project prior to the Closing;

(ix) all Liabilities arising out of or incurred in connection with the negotiation, preparation and execution of this Agreement, including fees and expenses of Seller’s counsel, accountants and other experts.

(b) Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, and without limiting the rights and obligations of the Parties under this Agreement, including under Article V and Article VIII, simultaneous with the Closing, Purchaser shall assume, and Purchaser hereby agrees to pay, satisfy, and discharge when due, any and all of the following Liabilities (other than the Excluded Liabilities) whether arising before, on, or after the Closing Date, of Seller relating to, resulting from, or arising out of the present, past, or future development, construction, ownership, or operation of the Project (collectively, the “Assumed Liabilities”):

(i) all Liabilities under the Project Contracts, Project Real Property Agreements, and Project Permits assumed by Purchaser, pursuant to, and subject to the limitations and conditions set forth in, Section 2.1.3;

(ii) other than Liabilities arising or accruing on or prior to the Closing, including Liabilities relating to Construction Costs, all Liabilities arising from the ownership, operation, maintenance, or use of the Project or the Project Assets by Purchaser following the Closing; and

(iii) any Liabilities for any Taxes with respect to the Project Assets for any taxable year (or portion thereof) beginning after the Closing Date.

## **2.2 Purchase Price.**

2.2.1 Consideration. On the terms and subject to the conditions set forth in this Agreement, the consideration for the purchase by Purchaser and sale by Seller of the Project Assets and the other matters set forth herein will be (a) the assumption of the Assumed Liabilities, and (b) a cash amount equal to [Amount] Dollars ([XXX]), subject to adjustment, if any, as provided in this Agreement for the cost of any Scope Change Order due to (i) a Scope Change Order that is requested and issued by Purchaser, including any changes to the inventory of Spare Parts that Purchaser requests pursuant to the EPC Agreement, and accepted by Seller and the EPC Contractor before or after the Closing Date, (ii) Force Majeure Delay in accordance with Section 5.15.1, or (iii) any Scope Change Order due to a Purchaser Caused Delay in accordance with Section 5.15.2 (the “Purchase Price”).

2.2.2 Method of Payment of Purchase Price. Payment of the Purchase Price shall be made by Purchaser in United States Dollars, by wire transfer of immediately available federal funds to an account located in the United States as Seller may specify by notice. The Purchase Price will be paid as follows:

(a) Milestone Payments. From and after the Effective Date, Purchaser shall pay Seller in accordance with the Payment Schedule following the achievement of each Milestone in such amounts as set forth therein (the “Milestone Payments”), and in accordance with Section 2.2.4 and Section 2.2.5 below.

(b) Retainage. If Seller is entitled to any retainage from a Contractor under a Material Project Contract (“Retainage”), then, subject to applicable Law, Seller shall provide, within [XX] Business Days of receipt from a Contractor, such Retainage to Purchaser, and Purchaser shall hold such Retainage on Seller’s behalf. Such Retainage shall be held by Purchaser as security for the performance of Seller’s obligations hereunder and any interest thereon shall accrue for the account of Purchaser and not Seller. Purchaser may use the Retainage to cure a default by Seller under this Agreement, for liquidated damages, for payment of unpaid Contractors and payments made to remove Liens filed by Contractors in connection with the Project, and any and all other amounts payable to Purchaser hereunder. Purchaser’s release of any Retainage held for the benefit of Seller shall be subject to the terms and conditions specified in the Material Project Contract giving rise to Seller’s right to withhold the Retainage from a Contractor. Notwithstanding

the forgoing, upon achievement of Substantial Completion, any Retainage then held by Purchaser in excess of the Punch List Holdback Amount shall be paid to Seller within [XX] Business Days.

(c) Punch List Hold Back Payments. As a condition to Substantial Completion, Seller shall provide Purchaser a copy of the Punch List pursuant to and in accordance with the Purchaser Access and Communications Protocol attached as Exhibit XX to the EPC Agreement. Following Substantial Completion, (i) Seller may submit to Purchaser on a monthly basis an invoice for the portion of the Punch List Holdback allocable to the Punch List item(s) completed by the EPC Contractor (as long as the aggregate amount of any such invoice equals or exceeds [dollar amount] ([ \$\_\_\_\_\_ ])) and (ii) within thirty (30) Days after receipt of such invoice, Purchaser shall pay Seller, an amount equal to the portion of the Punch List Holdback allocable to such completed Punch List item(s). Any remaining Punch List Holdback will be paid to Seller within thirty (30) days after achievement of Final Completion.

2.2.3 Conditions Precedent to Purchaser's Obligation to Make Milestone Payments for Key Milestones. For any Milestone Payment identified as a Key Milestone, the obligation of Purchaser to pay Milestone Payments for Work performed under the EPC Agreement shall become effective on the date the requirements for achieving any such Key Milestone are met pursuant to the terms of the EPC Agreement, subject only to the requirement that Seller deliver to Purchaser any evidence provided by EPC Contractor to Seller under the EPC Agreement.

2.2.4 Conditions Precedent to Purchaser's Obligation to Make Other Milestone Payments. Purchaser's obligation to make Milestone Payments for any Other Milestones, is subject to the occurrence on each Milestone Payment Date of each the following conditions precedent:

(a) Milestones. Seller shall have achieved the Other Milestone associated with the Work for which the payment is requested prior to Seller submitting its Seller's Invoice with respect thereto.

(b) No Default. No breach, violation or default shall have occurred and be continuing under any Project Contract to which Seller is a party and that has, or reasonably be expected to have, a Material Adverse Effect.

(c) No Proceeding or Litigation. No action, suit, proceeding or investigation by or before any Governmental Authority or any arbitrator shall be pending or, to Seller's Knowledge, threatened against or affecting Seller or the Project which would reasonably be expected to result in a Material Adverse Effect, unless such action, suit, proceeding or investigation has been initiated or threatened by Purchaser.

(d) No Material Adverse Effect. Since the date of this Agreement, no Material Adverse Effect shall have occurred and be continuing, except and to the extent that such Material Adverse Effect is a result of an act or omission of Purchaser (other than acts of Purchaser contemplated by this Agreement).

(e) Seller's Invoice. Purchaser shall have received a Seller's Invoice in compliance with Section 2.2.5, together with all supporting documents required thereby.

2.2.5 Requests for Payment. For each payment hereunder, Seller shall deliver an invoice (“Seller’s Invoice”) in the form set forth in Exhibit G. Each of the Parties agrees to deliver to the other Party any receipts, confirmations, or other appropriate documentation reasonably requested by such Party from time to time in order to evidence the payments owed pursuant Section 2.2.2. Seller’s Invoice for payments requested must be accompanied by all of the following or it shall not be deemed a complete Seller’s Invoice and Purchaser shall have no obligation to make the payment:

- (a) In the case of a Completion Milestone, a Completion Certificate;
- (b) An officer’s certificate signed by an Authorized Officer of Seller certifying that each of the conditions set forth in Section 2.2.4(b), (c), (d), and (e) has been satisfied;
- (c) Lien releases in the applicable forms attached as Exhibits [ ] from Seller, the EPC Contractor and each Major Contractor that performed Work covered by the Seller’s Invoice; and
- (d) An Independent Engineer’s Certificate.

2.2.6 Review of Invoice and Payment. Purchaser shall, within fifteen (15) days after receipt of any Seller’s Invoice, notify Seller if it disputes the Independent Engineer’s Certificate. For a Seller’s Invoice for a Milestone Payment tied to a Key Milestone that is accompanied by: (1) reasonable evidence from the EPC Contractor that such Key Milestone has been achieved, and (2) an Independent Engineer’s Certificate, then Purchaser shall make payment of the requested amount of the Milestone Payment no later than thirty (30) days after the date of the Seller’s Invoice. For any Seller’s Invoice associated with a Milestone Payment tied to an Other Milestone, Purchaser may dispute all or any portion of the Seller’s Invoice, in which case Purchaser may, in its discretion, withhold such portion of the Milestone Payment requested by Seller as Purchaser, in its discretion, determines may be reasonably necessary to complete any portion of the Work covered by the Seller’s Invoice in accordance with this Agreement. Upon receipt of notice from Purchaser that a Seller’s Invoice is disputed, Seller shall promptly take any and all reasonable actions as may be necessary to remedy any condition identified by Purchaser leading to such dispute. Payment of the disputed portion of any Seller’s Invoice shall be made by Purchaser within fifteen (15) days following the date on which the Parties mutually agree upon resolution of such dispute or such dispute is finally resolved pursuant to Article XI. Except for disputed portions of any Seller’s Invoice and those Seller’s Invoices for Milestone Payments tied to Key Milestones described above (which shall be paid in accordance with the terms described above), Purchaser shall pay Seller the requested amount of Milestone Payment, less any disputed portion of such Seller’s Invoice, no later than thirty (30) days after the date that Seller’s Invoice and all required supporting documentation was delivered in accordance with Section 2.2.4.

## **2.3 Tax Treatment of Purchase Price.**

The Parties acknowledge and agree that for purposes of income Tax reporting, the Project Assets do not include any goodwill or going concern value. Purchaser and Seller agree that neither they nor their Affiliates will file an Internal Revenue Service Form 8594 in connection with the

sale of the Project Assets, and they and their Affiliates will otherwise report the transaction consistently with the intent of this Section 2.3 for all income Tax reporting purposes.

## **2.4 The Closing.**

The closing of the transactions contemplated herein (the “Closing”) will take place at the offices of Purchaser in Portland, Oregon, at 10:00 a.m. Pacific time on the date as soon as practicable (but in no event longer than three (3) Business Days, after the conditions to the Closing set forth in Section 6.1 and Section 6.2 have been satisfied or waived by the applicable Party), or at such other place, time, or date as Purchaser and Seller mutually agree in writing (the “Closing Date”), and shall be effective as of 12:00:01 a.m. Pacific time on the Closing Date. Notwithstanding anything to the contrary in this Agreement, in no event shall the Closing and the associated Closing Date occur after the Outside Closing Date.

## **2.5 Closing Deliveries.**

2.5.1 Purchaser’s Closing Deliveries. On or prior to the Closing, Purchaser shall pay to Seller the Closing Payment in accordance with Section 2.2.2, and shall execute and deliver (as applicable) to Seller the following items:

(a) a counterpart signature page to the Bill of Sale substantially and in all material respects in the form attached as Exhibit B (the “Bill of Sale”), executed by an authorized representative of Purchaser;

(b) a counterpart signature page to one or more (as necessary) of the assignment and assumption agreements substantially and in all material respects in the form attached hereto as Exhibits C-1, C-2, and C-3 with such changes, if any, as may be required by the applicable counterparties thereto solely for Exhibits C-3 (collectively, the “Assignment and Assumption Agreements”), and executed by an authorized representative of Purchaser;

(c) a certificate, dated as of the Closing Date, executed by the Secretary or any Assistant Secretary of Purchaser, certifying that attached thereto is: (i) a true, accurate, and complete copy of a Certificate of Good Standing with respect to Purchaser, issued by the Secretary of State of the State of Oregon as of a recent date; (ii) a true, accurate, and complete copy of the resolutions of the board of directors of Purchaser, authorizing the execution, delivery, and performance by Purchaser of this Agreement and all of the other agreements and instruments, including the Ancillary Agreements, to which it is a party, in each case, to be executed and delivered by Purchaser in connection with this Agreement; and (iii) the name, title, and signature of each of the authorized representatives of Purchaser authorized to execute and deliver this Agreement and the other agreements and instruments contemplated by this Agreement, including the Ancillary Agreements, to which it is a party, substantially and in all material respects in the form attached as Exhibit D-1;

(d) a certificate, dated as of the Closing Date, executed by an authorized officer of Purchaser, certifying as to the matters set forth in Section 6.2.1 and Section 6.2.2; and

(e) copies of the necessary agreements for the required transmission and ancillary services.



2.5.2 Seller's Closing Deliveries. On or prior to the Closing, Seller shall execute and deliver, or shall cause to be executed and delivered (as applicable), to Purchaser the following items:

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

(b) counterpart signature page(s) to the Assignment and Assumption Agreements, executed by an authorized representative of Seller;

(c) an owner's title affidavit, with respect to the Project Site, executed by an authorized representative of Seller, in form and substance satisfactory to the Title Company;

(d) a certification of non-foreign status, in the form and manner which complies with the requirements of Section 1445(b)(2) of the Code and Treasury Regulation Section 1.1445-2(b)(2) with respect to Seller (or its direct or indirect regarded owner, as applicable);

(e) certificates, dated as of the Closing Date, executed by the Secretary or any Assistant Secretary of Seller, certifying that attached thereto is: (i) a true, correct, and complete copy of a Certificate of Good Standing with respect to Seller, issued by the Secretary of State of the State of [State] as of a recent date; (ii) a true, correct, and complete copy of the company action of Seller, authorizing the execution, delivery, and performance by Seller of this Agreement and all of the other agreements and instruments, including the Ancillary Agreements, to which it is a party, in each case, to be executed and delivered by Seller in connection with this Agreement; and (iii) the name, title, and signature of each of the authorized representatives of Seller authorized to execute and deliver this Agreement and the other agreements and instruments contemplated by this Agreement, including the Ancillary Agreements, to which it is a party, substantially and in all material respects in the forms attached as Exhibit D-2 and Exhibit D-3;

(f) a certificate, dated as of the Closing Date, executed by an authorized officer of Seller, certifying as to the matters set forth in Section 6.1.1 and Section 6.1.2;

(g) confirmation that the Seller's Letter of Credit remains in full force and effect as required by Section 5.16;

(h) Lien releases in the applicable forms attached as Exhibits [ ] from Seller, the EPC Contractor and each Major Contractor that performed Work as of the Closing Date; and

(i) all material information and documentation provided to Seller under the EPC Agreement, including Monthly Reports as defined in the EPC Agreement, and all documentation and information reasonably available to Seller in the ordinary course of business regarding prevailing wage and apprenticeship requirements set forth in Section 9.2.4, to demonstrate compliance with Code Section 48(a)(10) and (11).

## **2.6 Further Assurances; Post-Closing Cooperation.**

2.6.1 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at any Party's request and without further

consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment, and confirmation, provide such materials and information, and take such other actions as such Party may reasonably deem necessary or desirable in order to more effectively: (a) to transfer, convey, and assign to Purchaser, and to confirm Purchaser's title to, the Project Assets; (b) to effectuate the assumption by Purchaser of the Project Contracts, Project Real Property Agreements, Project Permits (other than Purchaser Permits), Project Intellectual Property, and the Assumed Liabilities; and (c) otherwise to complete the transactions contemplated by this Agreement.

#### 2.6.2 Pre-Closing Books and Records.

(a) Following Closing, each Party and its Affiliates will afford each other Party and their respective Representatives, during normal business hours, reasonable access to certain non-confidential documentation with respect to periods prior to Closing (the "Pre-Closing Books and Records") and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting Party in connection with: (i) the preparation of Tax Returns; (ii) compliance with the requirements of any Governmental Authority; (iii) any Excluded Liabilities or Assumed Liabilities; or (iv) any rights and obligations arising under Article VIII, Article IX, or Article XI. Each Party shall maintain Pre-Closing Books and Records reasonably expected to be required in connection with the matters described in items (i) through (iv) of the preceding sentence in accordance with the ordinary course document retention policies of such Party; provided, however, that nothing in this Agreement shall be deemed to obligate a Party to maintain the Pre-Closing Books and Records for longer than seven (7) years after Closing, and, (x) in the case of Purchaser, to provide access to Pre-Closing Books and Records other than those of Purchaser that are related to the transactions contemplated by this Agreement, and (y) in the case of Seller, to provide access to Pre-Closing Books and Records other than those of Seller; and provided, further, that, in the case of any dispute between the Parties, access to Books and Records shall instead be governed by the applicable Laws of discovery.

(b) Purchaser acknowledges and consents to the retention by Seller of information, including Books and Records, Seller has delivered to Purchaser relating to the Project Assets (the "Retained Information"). From and after the Closing Date for a period of two (2) years, Seller shall, and shall cause its Representatives to, treat the Retained Information relating solely to the Project Assets as strictly confidential (except to extent: (i) the Retained Information is or was generally available to the public; (ii) the Retained Information is or was available to Seller or its Representatives on a non-confidential basis from other sources not actually known by Seller to be under a duty of confidentiality to Purchaser; or (iii) compelled to disclose by judicial or administrative process or by other requirements of applicable Law, any stock exchange, or any other self-regulatory organization or as reasonably required by Seller in connection with the matters described in clauses (i) through (iv) of Section 2.6.2(a)).

2.6.3 Delivery of Books and Records. No later than the Closing Date (or in the case of Books and Records not immediately required for the ownership, use, operation, and maintenance of the Project that cannot be reasonably and practicably delivered at the Closing, as soon as reasonably practicable thereafter, but no later than thirty (30) days after the Closing Date), Seller shall deliver all Books and Records to Purchaser at Purchaser's offices in Portland, Oregon.\

#### 2.6.4 Seller Post-Closing Management; Purchaser Post-Closing Step-In Rights

(a) From the Closing Date through Final Completion, Seller shall perform supervision, administration, coordination, and management services necessary to cause the Project to achieve Substantial Completion and Final Completion, including (i) overseeing, directing, supervising and monitoring the construction of the Project in accordance with this Agreement and the schedule and deadlines set forth herein (including the Milestones); (ii) asserting the rights of Purchaser under the Project Contracts, including any warranties or guarantees thereunder, solely as necessary to achieve Substantial Completion and Final Completion; (iii) paying directly to counterparties under the Project Contracts all amounts due to such counterparties for the Work performed under such Contracts through Final Completion; and (iv) causing to be completed (and paying for the completion of) any Punch List Items.

(b) Following Closing, if Seller fails to achieve Substantial Completion by the Guaranteed Substantial Completion Date, Purchaser shall, within [x] Business Days, provide written notice to Seller if Purchaser elects (without prejudice to other rights or remedies that Purchaser may have under this Agreement): (i) to revoke Seller's authority to complete the Project under this Section 2.6.4; and (ii) to exercise its rights under the EPC Agreement to complete the Work ("Post-Closing Purchaser Rights"). If (and when) the Project achieves Substantial Completion after Purchaser has exercised its Post-Closing Purchaser Rights, Purchaser shall pay to Seller the payment due under this Agreement at Substantial Completion minus any losses or damages that any Purchaser Indemnified Party, acting in a commercially reasonable manner, sustains or incurs to cause the Project to achieve Substantial Completion. If Substantial Completion is achieved and the Project thereafter achieves Final Completion, Purchaser shall pay Seller the Punch List Holdback minus the sum of (i) any amounts paid by Purchaser under the Project Contracts after the Project's achievement of Substantial Completion (but only to the extent not paid by Seller on Purchaser's behalf pursuant to Section 2.6.4(a)), plus (ii) without duplication of amounts under clause (i), any losses or damages that any Purchaser Indemnified Party, acting in a commercially reasonable manner, sustains or incurs to cause the Project to achieve Final Completion. Unless and until Purchaser elects to revoke Seller's authority to complete the Project as provided for in this Section 2.6.4(b), Seller's obligations under Section 2.6.4(a) shall continue until the Project achieves Final Completion.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in Seller's Disclosure Schedule (as the same may be updated pursuant to Section 5.8), and subject to the disclaimers, acknowledgements, and agreements contained in Section 10.2 and Section 13.16, Seller represents and warrants to Purchaser as of the Effective Date, the Firm Date, the Closing Date, and Substantial Completion (except for those representations and warranties made as of a specified date, which shall be true and correct as of that date) as follows:

#### 3.1 Existence.

Seller is duly formed, validly existing, and in good standing, as applicable, under the Laws of the jurisdiction of its formation. Seller has the requisite [entity type] power and authority to

own, operate, and lease its properties and assets and to carry on its business as now being conducted. Seller is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business transacted by it makes qualification necessary, except where the failure to be so qualified, licensed, or in good standing would not reasonably be expected to have a Seller Material Adverse Effect.

### **3.2 Authority.**

Seller has all requisite [type of entity] power and authority to execute and deliver this Agreement, the EPC Agreement, and the Ancillary Agreements to which it is (or will be) a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to complete the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement, the EPC Agreement, and the Ancillary Agreements to which it is (or will be) a party in connection with the transactions contemplated hereby, and the performance by Seller of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary [entity type] action.

### **3.3 Binding Agreement.**

This Agreement, the Project Real Property Agreements, and the Ancillary Agreements to which Seller is (or will be) a party have been (or will be when delivered) duly and validly executed and delivered by Seller and, assuming due and valid authorization, execution and delivery thereof by Purchaser and each other party thereto, this Agreement, the Project Real Property Agreements, and the Ancillary Agreements to which it is (or will be) a party are (or will be when delivered) valid and binding obligations of Seller enforceable against Seller in accordance with their terms.

### **3.4 No Conflicts.**

The execution and delivery by Seller of this Agreement, the EPC Agreement, and the Ancillary Agreements to which it is (or will be) a party does not, and the performance by Seller of its obligations under this Agreement, the EPC Agreement, and the Ancillary Agreements to which it is (or will be) a party and the consummation of the transactions contemplated hereby and thereby, will not:

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

3.4.2 assuming all of the consents and approvals set forth in Schedule 3.4.2 (the "Seller's Consents") have been obtained or given, 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 Project Contract, Project Permit, or Project Real Property Agreement (with or without notice or lapse of time or both), except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained in writing (true, correct, and complete copies of which have been furnished to Purchaser);

3.4.3 assuming (a) all of the Seller's Consents have been obtained or given and (b) receipt of any Required Approvals, conflict with or result in a violation or breach of any term or provision of any Law applicable to Seller, the Project, the Project Site, or the Project Assets; or

3.4.4 assuming all of the Seller's Consents have been obtained or given, result in the imposition or creation of any Lien (other than a Permitted Lien or a Permitted Exception) upon any of the Project Assets, other than in favor of Purchaser.

### **3.5 Governmental Approvals and Filings.**

Except (a) as set forth in Schedule 3.5, (b) for any Seller's Consents, (c) for receipt of any Required Approvals, or (d) for ministerial consents, approvals, filings, or notices of a type that are routinely granted on application, no consent or approval of, filing with, or notice to any Governmental Authority by Seller is required in connection with the execution, delivery, and performance by Seller of this Agreement, the EPC Agreement, or any of the Ancillary Agreements to which it is (or will be) a party or the consummation of the transactions contemplated hereby or thereby.

### **3.6 Legal Proceedings.**

Except as set forth on Schedule 3.6, there are no Actions or Claims (a) outstanding or pending to which Seller or any of its Affiliates is a party or, (b) to Seller's Knowledge, threatened in writing against Seller or any of its Affiliates or any of its or their assets and properties, including the Project Assets, or the Project, in each case, which seek or would reasonably be expected to result in (i) the issuance of an Order restraining, enjoining, or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement or any of the Ancillary Agreements or, (ii) individually or in the aggregate, a Seller Material Adverse Effect.

### **3.7 Compliance with Laws.**

Seller is not in violation of or in default under any Law (excluding any Environmental Laws, which are exclusively addressed in Section 3.15, and Tax Laws, which are exclusively addressed in Section 3.22) applicable to it, the Project, the Project Site, or the Project Assets, in each case, in any material respect. Except as set forth on Schedule 3.7, Seller has not received written notification from any Governmental Authority alleging that it is in violation of any Law (excluding any Environmental Laws, which are exclusively addressed in Section 3.15, and Tax Laws, which are exclusively addressed in Section 3.22) applicable to it, the Project, the Project Site, or the Project Assets.

### **3.8 Title to Project Assets.**

As of the Closing Date, Seller has good and marketable title to the Project Assets constituting personal property (as opposed to real property) (the "Project Personal Property"), free and clear of all Liens, except for Permitted Liens.

### **3.9     Real Property.**

3.9.1 As of the Firm Date and the Closing Date, Seller holds good and valid leasehold and Easement interests and options in the Project Site pursuant to the Project Real Property Agreements. As of the Closing Date, the Project Real Property Agreements constitute all of the real property rights necessary for the development, construction, commissioning, ownership, operation, use, or maintenance of the Project in accordance with Prudent Operating Practices and applicable Law at the Project Site.

3.9.2 As of the Firm Date and the Closing Date, with respect to Seller or any Affiliate of Seller and, to Seller's Knowledge, each other party thereto, each Project Real Property Agreement is legal, valid, binding, and in full force and effect.

3.9.3 As of the Firm Date and the Closing Date, except as set forth in Schedule 3.9.3, (a) neither Seller nor any Affiliate of Seller is in breach or default in any material respect under any Project Real Property Agreement and, to Seller's Knowledge, no other party to a Project Real Property Agreement is in breach or default in any material respect thereunder, (b) no event has occurred which, with notice, lapse of time, or both, would constitute a breach or default by Seller or any Affiliate of Seller or, to Seller's Knowledge, any other party to a Project Real Property Agreement, or, to Seller's Knowledge, would permit termination, modification, or acceleration, thereof, and (c) neither Seller nor any Affiliate of Seller has received or delivered any written notice of breach or default or termination with respect to any Project Real Property Agreement.

3.9.4 Seller has all requisite [entity type] power and authority to execute and deliver the Project Real Property Agreements, to perform its obligations thereunder and to complete the transactions contemplated thereby. The execution and delivery by Seller of the Project Real Property Agreements, and the performance by Seller of its obligations thereunder, have been duly and validly authorized by all necessary [entity type] action.

3.9.5 There are no commitments or agreements between Seller or any Affiliate of Seller, on the one hand, and any Governmental Authority or a public or private utility, or any other Person, on the other hand, affecting the Project, the Project Site, the Project Real Property Agreements, the Project Equipment, the Project Improvements, the Project Permits, or any portion thereof or interest therein other than (a) Contracts between Operator and any of its subcontractors or vendors of any tier, (b) Contracts between EPC Contractor and any of its subcontractors or vendors of any tier and (c) as disclosed in the Seller's Disclosure Schedules.

3.9.6 Except as set forth on Schedule 3.9.6, as of the Firm Date and the Closing Date, there are no Actions or Claims pending or, to Seller's Knowledge, threatened, against, or affecting the Project, the Project Site, the Project Improvements, or any portion thereof or interest therein, in the nature of, or in lieu of, condemnation, land use, zoning or eminent domain proceedings, or otherwise.

3.9.7 As of the Firm Date and the Closing Date, Schedule 1.1(i) contains a true, correct, and complete list of all Project Real Property Agreements with respect to the Project. As

of the Firm Date and the Closing Date, Seller has delivered to Purchaser true, correct, and complete copies of all Project Real Property Agreements.

### **3.10 Sufficiency of Project Assets.**

3.10.1 As of the Closing Date, the Project Assets have achieved Mechanical Completion.

3.10.2 As of the Firm Date and the Closing Date, except as set forth in Schedule 3.10.1, the Project Assets constitute all of the Contracts, Permits (other than Purchaser Permits), Intellectual Property, rights, assets, and properties necessary to develop, construct, commission, and own the Project on the Project Site in accordance in all material respects with applicable Laws, the Project Permits, and Prudent Operating Practices, and as of the Closing Date, except as set forth in Schedule 3.10.1, (a) the Project Assets constitute all of the Contracts, Permits (other than Purchaser Permits), Intellectual Property, rights, assets, and properties necessary to develop, construct, commission, own, operate, or maintain the Project on the Project Site in accordance in all material respects with applicable Laws, the Project Permits, and Prudent Operating Practices, and (b) other than the Project Assets, there are no other Contracts, Permits, Intellectual Property, rights, assets, or properties that are held by Seller or any Affiliate of Seller relating to, associated with, or concerning the Project, that are necessary for the development, construction, commissioning, ownership, operation, or maintenance of the Project in accordance in all material respects with applicable Laws, the Project Permits, and Prudent Operating Practices.

3.10.3 As of the Firm Date, Schedule 1.1(g) contains a true, correct, and complete list of the Major Equipment, and as of the Closing Date, (a) Schedule 1.1(g) contains a true, correct, and complete list of all Project Equipment, (b) Schedule 1.1(h) contains a true, correct, and complete list of all Project Improvements, and (c) except as set forth in Schedule 3.10.2, all Project Equipment and Project Improvements are located at the Project Site.

3.10.4 Seller's Qualifying Tax Opinion. As of the Closing Date, the facts and circumstances assumed in Seller's Qualifying Tax Opinion are true and correct in all material respects.

3.10.5 Other ITC Matters. As of the Effective Date, the Firm Date and the Closing Date:

(a) No grants have been provided by any governmental body for use in connection with the Project or with respect to which Seller or any of Seller's Affiliates is the beneficiary and which would require a reduction in Investment Tax Credits;

(b) No proceeds of any issue of state or local government obligations have been used to provide financing for the Project on which the interest is exempt from tax under Section 103 of the Internal Revenue Code within the meaning of Section 45(b)(3) of the Internal Revenue Code; and

(c) No subsidized energy financing has been provided (directly or indirectly) under a federal, state or local program in connection with the Project within the meaning of Section 45(b)(3) of the Internal Revenue Code.

### **3.11 No Seller Material Adverse Effect.**

Since the Execution Date, there has not occurred any Seller Material Adverse Effect.

### **3.12 Contracts.**

3.12.1 As of the Firm Date and the Closing Date, Schedule 1.1(f) contains a true, correct, and complete list of all Project Contracts, including all amendments, waivers, supplements, schedules, and exhibits thereto. All Project Contracts have been entered into by Seller or assigned to Seller, and any such assignment was made in accordance with the terms and conditions of the Project Contract. Seller has not sold, assigned, or otherwise transferred any of its rights or obligations in any Project Contract except pursuant to this Agreement and the Ancillary Agreements. As of the Firm Date, all of the Firm Transmission Agreements are in deferred status. As of the Closing Date, assuming all of the Seller's Consents have been obtained or given, all Project Contracts are assignable to Purchaser pursuant to the terms hereto and all of the Firm Transmission Agreements will no longer be in deferred status.

3.12.2 Seller has provided Purchaser with true, correct, and complete copies of all Project Contracts set forth on Schedule 1.1(f), including all amendments, waivers, supplements, schedules, and exhibits thereto, to the extent such Project Contract was entered into on or prior to the Firm Date, as of the Firm Date, and to the extent such Project Contract was entered into after the Firm Date, as of Closing Date.

3.12.3 Except as set forth on Schedule 3.12.3, as of the Firm Date and the Closing Date, no facts or circumstances exist and no event has occurred that with the giving of notice or lapse of time would entitle the EPC Contractor to any Scope Change Order or justify any claim for equitable relief under the EPC Agreement or otherwise that would include any adjustment in the Purchase Price or the date of Substantial Completion.

3.12.4 Neither Seller, nor to Seller's Knowledge, any other party to any Project Contract, is in default in any material respect under, and, to Seller's Knowledge, no event has occurred which, with the giving of notice or the lapse of time or both, would result in a default of Seller under, any Project Contract. Each Project Contract constitutes a legal, valid and binding agreement of Seller and, to Seller's Knowledge, of each other party thereto, enforceable in accordance with its terms.

3.12.5 Neither Seller nor any of its Affiliates has sold or transferred, agreed or committed to sell or transfer, or granted any options or rights to purchase electric power or electric capacity, in connection with or related to the Project.

### **3.13 Permits.**

3.13.1 Lists of Permits.



(a) Part A of Schedule 1.1(b) sets forth a true, correct, and complete list of all Project Permits;

(b) Part B of Schedule 1.1(b) sets forth a true, correct, and complete list of all Firm Date Permits;

(c) Part C of Schedule 1.1(b) sets forth a true, correct, and complete list of all Purchaser Permits; and

(d) As of the Firm Date, Part D of Schedule 1.1(b) sets forth a true, correct, and complete list of the Project Permits for which Seller or any Affiliate of Seller has applied (other than any Firm Date Permits).

3.13.2 As of the Firm Date and Closing Date, with respect to each Firm Date Permit or Project Permit (other than the Purchaser Permits) that has been obtained and issued in the name of Seller or the Project as of such Firm Date or Closing Date, respectively:

(a) each such Firm Date Permit or Project Permit is legal, valid, and binding, and in full force and effect;

(b) Seller is in compliance, in all material respects, with the terms and conditions of each such Firm Date Permit or Project Permit, and, to Seller's Knowledge, no event has occurred which with the giving of notice or lapse of time, or both, would constitute material non-compliance with such terms and conditions;

(c) except as set forth on Schedule 3.13.2(c), no Action or Claim is pending or, to Seller's Knowledge, threatened in writing, in each case, which challenges the legality, validity, or enforceability of, or threatens to revoke, suspend, or materially modify, any such Firm Date Permit or Project Permit;

(d) no written notice of noncompliance or default has been received by Seller or any Affiliate of Seller with respect to any such Firm Date Permit or Project Permit; and

(e) no information has been received by Seller or any Affiliate of Seller and, to Seller's Knowledge, there exist no conditions, facts, or circumstances that would reasonably be expected to restrict or prevent Seller from transferring any such Firm Date Permit or Project Permit to Purchaser on the Closing Date or from obtaining any Project Permit for which Seller or an Affiliate of Seller has applied or which has not been obtained as of such Firm Date or Closing Date, in each case, as and when needed in accordance with Prudent Operating Practices and applicable Law. To Seller's Knowledge, there exist no conditions, facts, or circumstances that would reasonably be expected to prevent or restrict the ability of Purchaser to obtain any Purchaser Permit.

3.13.3 Except as set forth on Schedule 3.13.3, all Firm Date Permits (other than the Purchaser Permits) have been obtained and issued in the name of Seller or the Project on or prior to the Firm Date.

3.13.4 Except as set forth on Schedule 3.13.4, all Project Permits (other than the Purchaser Permits and Firm Date Permits) have been obtained and issued in the name of Seller or the Project on or prior to the Closing Date.

3.13.5 As of the Firm Date and Closing Date, Seller has delivered to Purchaser true, correct, and complete copies of all Project Permits and applications therefor in accordance with Section 5.13.

### **3.14 Insurance.**

Schedule 3.14 contains a summary description of all material insurance policies maintained by or on behalf of Seller. Such insurance policies are in full force and effect and all premiums due and payable for such insurance policies have been paid. Neither Seller nor any Affiliate of Seller has received any written notice from the insurer under any such insurance policy disclaiming coverage, reserving rights with respect to a particular Claim relating to the Project or such policy in general, or canceling any such policy. To Seller's Knowledge, there is no Claim or Action currently pending with respect to any such insurance policy relating to the Project.

### **3.15 Environmental Matters.**

3.15.1 Seller will develop and construct the Project in compliance with Environmental Laws.

3.15.2 As of the Firm Date and the Closing Date, Seller will have delivered to Purchaser true, correct, and complete copies of all environmental site assessment studies and reports and other environmental assessments, surveys, studies, audits, and reports, including reports, assessments, surveys, studies, audits, and reports relating to wetlands, air and emissions or discharges, or state or federally protected, threatened, sensitive, or endangered species, that are in the possession or control of Seller or any of its Affiliates as of or after the Execution Date, and which relate to environmental matters in connection with development, construction, ownership, use, operation, or maintenance of the Project or the Project Site under Environmental Laws or which relate to an Environmental Condition at the Project Site. All material environmental investigations, surveys, studies, audits, tests, reviews, or other analyses conducted on behalf of Seller or any Affiliate of Seller, and any correspondence or records of communication with Governmental Authorities or Persons relating to Environmental Laws, in relation to the Project, the Project Site, the Project Assets, and the Project Real Property Agreements set forth in Schedules 1.1(b), 1.1(c), 1.1(f), 1.1(g), 1.1(h), 1.1(i), and 1.1(j) have been delivered to Purchaser prior to the Effective Date of this Agreement, and, to Sellers' Knowledge, there are no other such items.

3.15.3 To Sellers' Knowledge, no portion of the Project Site has been used for the disposal of Hazardous Materials or contains or has ever contained any aboveground or underground storage tank or any surface impoundment used for the management of wastewater.

3.15.4 To Seller's Knowledge, there exist no conditions, facts, or circumstances that would reasonably be expected to result in the imposition of Liabilities under, or material noncompliance by Seller or its Affiliates or the Project with, any Environmental Laws with respect to the Project or the Project Site. Neither Seller nor any Affiliate of Seller has agreed to or is subject

to any Order or Environmental Claim relating to non-compliance with any Environmental Law or to any investigation or cleanup of Hazardous Materials or Environmental Conditions with respect to the Project or the Project Site. There are no Claims or Actions pending or, to Seller's Knowledge, threatened under any Environmental Law relating to the Project or the Project Site.

3.15.5 Seller and its Affiliates have conducted all activities with respect to the development of the Project and the Project Assets in compliance with all Environmental Laws in all material respects, and no Action, hearing, or written charge, complaint, Claim, or notice has been filed or commenced, or to Sellers' Knowledge, threatened against Seller or any Affiliate of Seller with respect to the Project Assets, any applicable landowner (with respect to the Project Site), the Project, the Project Assets, or the Project Site alleging any failure to comply with or any Liability under any applicable Environmental Law. To Sellers' Knowledge, (a) the Project has been since its inception, and is currently, in compliance with all Environmental Laws, and (b) there has been no Release of any Hazardous Material on the Project Site except in amounts or concentrations such that no Liabilities under any Environmental Law, Contract, or Project Real Property Agreement have or might arise, and such that there would be no cause for Governmental Authorities with jurisdiction over the Seller, the Project Assets, or the Project Real Property Agreements to take action if brought to its attention.

3.15.6 Seller or its Affiliates have not caused a Release of Hazardous Materials and, to Seller's Knowledge, there has been no Release of Hazardous Materials, in each case on, beneath or from the Project Site, except for Releases of Hazardous Materials that would not reasonably be expected to result in a claim by a Governmental Authority or other Person not affiliated with Purchaser or a requirement to conduct a Remediation.

3.15.7 To Seller's Knowledge, except as referenced in reports listed in Schedule 3.15.7, (a) no species protected under Environmental Laws have been observed at the Project Site, (b) no human remains or historical, archaeological, or paleontological resources regulated under Environmental Laws have been identified on the Project Site, and (c) no wetlands or water bodies regulated under Environmental Laws are located on the Project Site.

### **3.16 Employee and Employee Benefits Matters.**

3.16.1 Seller does not employ and has never employed any employees.

3.16.2 Seller does not sponsor, maintain, contribute to, or have any obligation to contribute to, and has never sponsored, maintained, contributed to, or had any obligation to contribute to, any employee benefit plan.

### **3.17 Brokers.**

All negotiations relative to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby have been carried out by Seller directly with Purchaser without the intervention of any Person on behalf of Seller in such manner as to give rise to any valid Claim by any Person against Purchaser or any of its Affiliates or any of their respective Representatives for a finder's fee, brokerage commission, or similar payment.

### **3.18 Intellectual Property.**

As of the Closing Date, Schedule 3.18 contains a true, correct, and complete list and description of all Intellectual Property necessary for the ownership, use, operation, or maintenance of the Project (“Project Intellectual Property”). As of the Closing Date, Seller shall convey and Purchaser will acquire from Seller ownership of or the right to use all the Project Intellectual Property for the ownership, use, operation, or maintenance of the Project in accordance with applicable Laws, the Project Permits, and Prudent Operating Practices, free and clear of all Liens, other than Permitted Liens. Seller has not received and is not aware of any claim in writing that any Project Intellectual Property infringes or misappropriates, in any material respect, the Intellectual Property of any other Person.

### **3.19 Reports.**

Seller has delivered to Purchaser a true, correct, and complete copy of each Report in the possession of Seller or its Affiliates, including any Reports listed on Schedule 3.19. To Seller’s Knowledge, there has been no material change in any findings or conclusions of any Report delivered by Seller to Purchaser other than for which Seller has redelivered such Report to Purchaser in final form as revised to address such change pursuant to Section 5.10.3. As of the Firm Date and the Closing Date, Schedule 3.19 contains a true, correct, and complete list of all Reports.

### **3.20 Anti-Corruption.**

3.20.1 Neither Seller, nor any of its Affiliates and to Seller’s Knowledge no manager, executive, officer, agent, or other Representative of any of the aforementioned Persons has made, directly or indirectly, any bribe or kickback, illegal political contribution, payment from company funds that was incorrectly recorded on the books and records of any of the aforementioned Persons, or any unlawful payment from company funds to any Governmental Authority or any officials of any Governmental Authority in their individual capacities, in either case for the purpose of affecting their action or the actions of the jurisdiction that they represent to obtain favorable treatment in securing any business, Contracts, or Permits, or to obtain special concessions of any kind whatsoever, or illegal payment from company funds to obtain or retain any business.

3.20.2 Neither Seller, nor, to Seller’s Knowledge, any of its Affiliates nor any of their respective directors, officers, agents, employees, or, to Seller’s Knowledge, any other Persons acting on their behalf has, in connection with the operation of their respective businesses, (a) used any corporate or other funds for unlawful contributions, payments, gifts, or entertainment, or made any unlawful expenditures relating to political activity to officials, candidates or members of any Governmental Authority or political party or organization, or established or maintained any unlawful or unrecorded funds in violation of Section 104 of the U.S. Foreign Corrupt Practices Act of 1977, as amended, the United Kingdom Bribery Act of 2010, or any other similar applicable Law, (b) paid, accepted, or received any unlawful contributions, payments, expenditures, or gifts,

or (c) violated in any material respect or operated in material non-compliance with any export restrictions, anti-boycott regulations, embargo regulations, or other applicable Law.

### **3.21 Solvency.**

No petition or notice has been presented, no Order has been made, and no resolution has been passed for the Bankruptcy, liquidation, winding-up, or dissolution of Seller. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Seller's assets or the income of Seller. Seller has no plan or intention of, nor has received any written notice that any other Person has any plan or intention of, filing, making, or obtaining any such petition, notice, Order, or resolution or of seeking the appointment of such a receiver, trustee, custodian, or similar fiduciary.

### **3.22 Taxes.**

3.22.1 All Tax Returns that were required to be filed with respect to the Project Assets have been timely filed, and such Tax Returns were prepared in compliance with applicable Law and were true, correct, and complete in all material respects. All Taxes required to be paid with respect to the Project Assets (whether or not shown due on any Tax Returns) have been timely paid.

3.22.2 There are no audits, Claims, Actions, assessments, levies, or administrative or judicial proceedings pending, or to Seller's Knowledge, threatened, proposed, or contemplated with respect to the Project Assets by any Taxing Authority.

3.22.3 There is no extension or waiver of the application of any statute of limitations of any jurisdiction regarding the assessment or collection of any Tax with respect to the Project Assets.

3.22.4 Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, member, or other third party.

3.22.5 No written claim has ever been made by a Taxing Authority in a jurisdiction where a Tax Return is not filed by, or with respect to, Seller or the Project Assets, that Seller (with respect to the Project Assets) or any of the Project Assets is or may be subject to Tax in that jurisdiction.

3.22.6 No power of attorney is currently in effect, and no Tax ruling has been requested of any Governmental Authority with respect to any Tax matter, relating to the Project Assets.

3.22.7 Seller (or if Seller is a disregarded entity, the Person treated as owning Seller's assets for income Tax purposes) is not a foreign person as defined in Section 1445(f)(3) of the Code.

3.22.8 Neither Seller nor any Affiliate of Seller has taken, nor does Seller or any Affiliate of Seller intend to take, a position on any Tax Return that is inconsistent with the Project,

including the Project Assets, being Placed In Service by Purchaser. Each part of the Project, including the Project Assets, is new equipment. Neither Seller nor any Affiliate of Seller has claimed, nor does Seller or any Affiliate of Seller intend to claim, on any Tax Return any depreciation or amortization deductions, or any other tax credits or deductions that are available with respect to ownership or operation of the Project or any property that is part of the Project, including the Project Assets.

3.22.9 None of the property in the Project, including the Project Assets, is “tax-exempt bond financed property” or “tax-exempt use property” within the meaning of Section 168 of the Code, or imported property of the kind described in Section 168(g)(6) of the Code. No election under Section 168(g)(7) of the Code has been made with respect to any part of the Project, including the Project Assets. The Project, including the Project Assets, is located in its entirety in the United States of America.

3.22.10 No portion of the Project, including the Project Assets, has benefited from the proceeds of any federal or state grant or rebate program, and no application with respect to any such grant or rebate has been filed or submitted.

3.22.11 No portion of the Project, including the Project Assets, is or has been financed with, and neither Seller nor any Affiliate of Seller has benefited from: (a) a grant provided by the United States of America, a state, a political subdivision of a state or any other Governmental Authority; (b) proceeds of an issue of state or local government obligations, the interest on which is exempt from tax under Section 103 of the Code; or (c) any subsidized energy financing provided (directly or indirectly) under a federal, state, or local program provided in connection with the Project (in each case, within the meaning of Section 45(b)(3) of the Code).

### **3.23 Anti-Forced Labor Compliance.**

In connection with the construction, operation and procurement of the Project Assets, Seller and, to Seller’s Knowledge, the direct and indirect suppliers of the Project Assets, (a) have not utilized Forced Labor or allowed the utilization of in its supply chain, including in the manufacturing and production of Project Assets procured; and (b) have complied with all Anti-Forced Labor Laws.

### **3.24 Prevailing Wage and Apprenticeship Requirements.**

Seller is not aware of any material breach by a Contractor performing work or providing equipment for the Project of any Prevailing Wage and Apprenticeship Requirements contained in any Project Contracts.

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

Except as set forth in Purchaser’s Disclosure Schedule, and subject to the disclaimers, acknowledgements and agreements contained in Section 10.2 and Section 13.16, Purchaser represents and warrants to Seller as of the Effective Date, the Firm Date and the Closing Date (except for those representations and warranties made as of a specified date, which shall be true and correct as of that date) as follows:

#### **4.1 Existence.**

Purchaser is duly formed, validly existing, and in good standing, as applicable, under the Laws of the jurisdiction of its formation. Purchaser has the requisite corporate power and authority to own, operate, and lease its properties and assets. Purchaser is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business transacted by it makes qualification necessary, except where the failure to be so qualified, licensed, or in good standing would not be reasonably expected to have a Purchaser Material Adverse Effect.

#### **4.2 Authority.**

Purchaser has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is (or will be) a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to complete the transactions contemplated hereby and thereby. The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party in connection with the transactions contemplated hereby, and the performance by Purchaser of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary corporate action.

#### **4.3 Binding Agreement.**

This Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party have been (or will be when delivered) duly and validly executed and delivered by Purchaser and, assuming due and valid authorization, execution, and delivery thereof by Seller and each other party thereto, this Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party are (or will be when delivered) valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms.

#### **4.4 No Conflicts.**

The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which it is (or will be) a party does not, and the performance by Purchaser of its obligations under this Agreement and the Ancillary Agreements to which it is (or will be) a party, and the consummation of the transactions contemplated hereby and thereby will not:

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

4.4.2 assuming all of the consents and approvals set forth in Schedule 4.4.2 (the "Purchaser's Consents") have been obtained or given, 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 Contract or other obligation (with or without notice or lapse of time, or both) to which Purchaser is a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or

consents have been obtained in writing (true, correct, and complete copies of which have been furnished to Seller); or

4.4.3 assuming (a) all of the Purchaser's Consents have been obtained or given, and (b) receipt of any Required Approvals, conflict with or result in a violation or breach of any term or provision of any Law applicable to Purchaser or any of its assets and properties.

#### **4.5 Governmental Approvals and Filings.**

Except (a) as set forth in Schedule 4.5, (b) for any Purchaser's Consents, and (c) for receipt of any Required Approvals, no consent or approval of, filing with, or notice to, any Governmental Authority is required in connection with the execution, delivery, and performance by Purchaser of this Agreement or any of the Ancillary Agreements to which Purchaser is (or will be) a party or the consummation by Purchaser of the transactions contemplated hereby or thereby.

#### **4.6 Legal Proceedings.**

Except as set forth in Schedule 4.6, there are no Claims or Actions (a) outstanding or pending to which Purchaser is a party or (b) to Purchaser's Knowledge, threatened in writing against Purchaser or any of its assets and properties, which seek or would be reasonably expected to result in (i) the issuance of an Order restraining, enjoining, or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement or any of the Ancillary Agreements, or (ii) individually or in the aggregate, a Purchaser Material Adverse Effect.

#### **4.7 Brokers.**

All negotiations relative to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby have been carried out by Purchaser directly with Seller without the intervention of any Person on behalf of Purchaser in such manner as to give rise to any valid claim by any Person against Seller or any of its Affiliates or any of their respective Representatives for a finder's fee, brokerage commission, or similar payment.

#### **4.8 Financial Resources.**

Purchaser has and, as and when required pursuant to the terms of this Agreement will have, access to cash sufficient to satisfy its obligations to pay the Purchase Price.

#### **4.9 Solvency.**

No petition or notice has been presented, no Order has been made, and no resolution has been passed for the Bankruptcy, liquidation, winding-up, or dissolution of Purchaser. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Purchaser's assets or the income of Purchaser. Purchaser has no plan or intention of, nor has it received any written notice that any other Person has any plan or intention of, filing, making, or obtaining any such petition, notice, Order, or resolution or of seeking the appointment of such a receiver, trustee, custodian, or similar fiduciary.



#### **4.10 Anti-Corruption.**

4.10.1 Neither Purchaser, nor any of its Affiliates and to Purchaser's Knowledge no manager, executive, officer, agent, or other Representative of any of the aforementioned Persons has made, directly or indirectly, any bribe or kickback, illegal political contribution, payment from company funds that was incorrectly recorded on the books and records of any of the aforementioned Persons, or any unlawful payment from company funds to any Governmental Authority or any officials of any Governmental Authority in their individual capacities, in either case for the purpose of affecting their action or the actions of the jurisdiction that they represent to obtain favorable treatment in securing any business, Contracts, or Permits, or to obtain special concessions of any kind whatsoever, or illegal payment from company funds to obtain or retain any business.

4.10.2 Neither Purchaser, nor, to Purchaser's Knowledge, any of its Affiliates nor any of their respective directors, officers, agents, employees or, to Purchaser's Knowledge, any other Persons acting on their behalf has, in connection with the operation of their respective businesses, (a) used any corporate or other funds for unlawful contributions, payments, gifts, or entertainment, or made any unlawful expenditures relating to political activity to officials, candidates, or members of any Governmental Authority or political party or organization, or established or maintained any unlawful or unrecorded funds in violation of Section 104 of the Foreign Corrupt Practices Act of 1977, as amended, the United Kingdom Bribery Act of 2010, or any other similar applicable Law, (b) paid, accepted, or received any unlawful contributions, payments, expenditures, or gifts, or (c) violated in any material respect or operated in material non-compliance with any export restrictions, anti-boycott regulations, embargo regulations, or other applicable Law.

### **ARTICLE V COVENANTS**

#### **5.1 Efforts to Close and Fulfillment of Conditions.**

After the Execution Date and prior to the Closing:

5.1.1 Each Party shall use Commercially Reasonable Efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, or advisable under Law to complete and make effective the transactions contemplated by this Agreement. Such actions shall include each Party using Commercially Reasonable Efforts to ensure satisfaction of the conditions precedent to its obligations hereunder, as soon as practicable after the Execution Date. Each Party shall reasonably cooperate with the other Party in performing the obligations required by this Section 5.1, including the negotiation, execution, and assignment of Project Contracts.

5.1.2 Subject to Section 5.3, each Party shall not take any action, and shall not permit any action controlled by it to be taken, which would reasonably be expected to delay the completion of the transactions contemplated by this Agreement.

## **5.2 Consents and Approvals.**

Without limiting the generality of Section 5.1, but subject in all respects to Section 5.3:

5.2.1 After the Execution Date and prior to Closing, each Party shall provide reasonable cooperation to the other Party in obtaining consents or approvals of, making all filings with and giving all notices to Governmental Authorities or other Persons required to consummate the transactions contemplated by this Agreement and the Ancillary Agreements. The Parties shall use Commercially Reasonable Efforts to respond promptly and accurately to any requests for additional information made by and otherwise to cooperate with any such Governmental Authorities. The Parties agree that they shall consult with each other with respect to the transfer to Purchaser of the Project Assets and Assumed Liabilities and the making, giving, or obtaining by Purchaser or Seller of any Required Approvals and the Permits or Consents of all Governmental Authorities and other third-party Persons necessary for the Project to achieve Final Completion. Each Party shall cooperate in good faith with all such Governmental Authorities and use Commercially Reasonable Efforts to complete promptly and lawfully the transactions contemplated by this Agreement.

5.2.2 Each Party shall not take any action, and shall not permit any action controlled by it to be taken, which would reasonably be expected to impair the ability of the Parties to secure all Required Approvals with or from any Governmental Authority to consummate the transactions hereunder, or take any action with any Governmental Authority relating to the foregoing, or agree, in writing or otherwise, to do any of the foregoing, in each case which would reasonably be expected to prevent the consummation of the transactions contemplated hereby or result in the failure to satisfy any condition to consummation of the transactions contemplated hereby. Each Party shall respond to and use Commercially Reasonable Efforts to resolve as promptly as reasonably practicable any objections asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement.

## **5.3 Limitation.**

Notwithstanding anything to the contrary in this Article V, nothing in Section 5.1 or Section 5.2 shall require, or be construed to require, Purchaser or Seller or any of their respective Affiliates to agree to: (a) sell, hold, divest, discontinue, or limit, before or after the Closing Date, any assets, businesses, or interests of Purchaser or Seller or any of their respective Affiliates (other than pursuant to this Agreement); (b) materially limit the Purchaser's freedom of action with respect to, or its ability to own and control the Project Assets on and after Closing; (c) waive any of their respective conditions to Closing set forth in Section 6.1, Section 6.2, Section 6.3, Section 6.4, or Section 6.5; or (d) any modification or waiver of the terms and conditions of this Agreement.

## **5.4 Real Estate Matters.**

### **5.4.1 Initial Title Cure Period.**

(a) Title Commitments, ALTA Survey. As soon as reasonably practicable after the Execution Date and not later than [DATE], Seller shall deliver to Purchaser (i) a Title Commitment issued by the Title Company with respect to each parcel of real property comprising

the Project Site or that is the subject of a Project Real Property Agreement, and (ii) a current ALTA Survey with respect to each parcel of real property comprising the Project Site. The ALTA Survey shall include an overlay of the proposed Project Facilities to be installed on the Project Site as indicated by the Project Site Plan.

(b) Title Curative Requirements. As soon as practicable (but, in any event, no later than thirty (30) days) after Seller has delivered to Purchaser any Title Commitments or any ALTA Surveys required to be delivered pursuant to Section 5.4.1(a), Purchaser may provide Seller with a title objection letter (the “Title Objection Letter”) (for the avoidance of doubt, a separate thirty (30) day period shall be triggered and measured for each separate delivery of Title Commitment(s) and ALTA Survey(s)) delivered in accordance with Section 13.1 which identifies all exceptions to title contained in the Title Commitments or ALTA Surveys that are both (x) exceptions not constituting a Permitted Lien, and (y) exceptions identified by Purchaser as Objectionable Title Matters (such identified exceptions, “Initial Title Objections.” In order for an exception to be an Initial Title Objection hereunder, Purchaser must identify such Initial Title Objection in the Title Objection Letter within the prescribed thirty (30) day period. After delivery of the Title Objection Letter to Seller as provided above, Seller will have thirty (30) days to review and to respond in writing with objections it may have to the proposed Initial Title Objections identified in the Title Objection Letter. If Seller objects to any of the proposed Initial Title Objections identified in the Title Objection Letter, Purchaser and Seller agree to work together in good faith to discuss and consider such objections on which matters will be included as Initial Title Objections. To assist Seller with expediting its curative efforts required to address the Initial Title Objections, prior to the date on which Purchaser delivers the Title Objection Letter, Purchaser will, as promptly as practicable after the delivery by Seller to Purchaser of any Title Commitments and the ALTA Surveys, notify Seller from time to time in good faith of exceptions to title that Purchaser reasonably believes will be Initial Title Objections or are likely to require Curative Documents.

(c) Title Objections. From the receipt of the Title Objection Letter to ten (10) Business Days prior to the Closing Date, Seller shall use Commercially Reasonable Efforts to cause to be cured each Initial Title Objection to Purchaser’s reasonable satisfaction by Curative Actions or by utilizing Curative Documents on forms approved by Purchaser and the Title Company.

5.4.2 Secondary Title Cure Period. On or before sixty (60) days prior to the Closing Date (but in no event more than one hundred twenty (120) days prior to the Closing Date), Seller shall have delivered to Purchaser (a) an update of the Title Commitment (“Updated Title Commitment”) with respect to each parcel of real property comprising the Project Site or that is the subject of a Project Real Property Agreement, and (b) an updated ALTA Survey (“Updated ALTA Survey”) with respect to each parcel of real property comprising the Project Site upon which Project Facilities are or will be located. To the extent that the Updated Title Commitment or Updated ALTA Survey identifies one or more Liens, other than Permitted Liens, that were not reflected on the Title Commitment or ALTA Survey or other revisions to the Title Commitment or ALTA Survey (including, if applicable, any matter in any underlying document that was not provided to Purchaser and that is delivered to Purchaser after Purchaser’s delivery of the Title Objection Letter), Purchaser may identify any such Liens, other than Permitted Liens, to which it objects (collectively, “Closing Date Title Objections”) in an updated Title Objection Letter

delivered to Seller within thirty (30) days after Purchaser's receipt of the later of the Updated Title Commitment and Updated ALTA Survey. From the receipt of the updated Title Objection Letter to the Closing Date, Seller shall use Commercially Reasonable Efforts to cause to be cured each Closing Date Title Objection to Purchaser's reasonable satisfaction by Curative Actions or by utilizing Curative Documents on forms approved by Purchaser and the Title Company.

5.4.3 Costs Associated with Real Property Matters. Seller will be responsible for the payment for all Title Commitments (and any amendments, updates, and supplements thereto) and all recording charges and expenses incurred in connection with recording any Project Real Property Agreement (or amendments or memoranda thereof), any Curative Documents, and any fees and related charges incurred for title curative measures, the Title Commitment, and Updated Title Commitment. In the event Seller fails to effectuate Curative Action(s) to Purchaser's reasonable satisfaction, and the Title Company is unwilling to insure over (at Seller's expense) any of the title exceptions set forth in Exhibit P hereto despite Seller's Commercially Reasonable Efforts to obtain such insurance (each, an "Outstanding Title Exception"), Seller will indemnify the Purchaser Indemnified Parties for Losses incurred by any Purchaser Indemnified Party to the extent resulting from any of the Outstanding Title Exceptions, up to [Amount] ([\$XXX]) in the aggregate. Seller's indemnification obligation for Outstanding Title Exceptions shall survive for a period of three (3) years following the Closing.

5.4.4 Permitted Exceptions. It is understood and agreed that, notwithstanding anything to the contrary, the following shall be considered "Permitted Exceptions" for all purposes hereunder: (a) any exception to title appearing on a Title Commitment or ALTA Survey that is not identified by Purchaser as an Initial Title Objection on a Title Objection Letter within the prescribed thirty (30)-day period pursuant to Section 5.4.1(b); (b) any exception to title appearing on the Updated Title Commitment or ALTA Survey that is not identified by Purchaser as a Closing Date Title Objection in an updated Title Objection Letter within the prescribed thirty (30)-day period pursuant to Section 5.4.2; and (c) any Initial Title Objection or Closing Date Title Objection that the Title Company is willing to insure over by affirmative coverage or endorsement in form and substance and on terms reasonably acceptable to Purchaser.

5.4.5 Project Real Property Agreements. Except as consented to by Purchaser in writing, (a) Seller shall not amend or otherwise modify any Project Real Property Agreement existing as of the Execution Date such that the financial obligations imposed on the lessee, purchaser, or grantee under such Project Real Property Agreement would be increased and (b) Seller shall not enter into any Project Real Property Agreement after the Execution Date (not covered by Section 5.4.5(a)) other than in form and substance substantially and in all material respects the same as the Project Real Property Agreements existing as of the Execution Date.

5.4.6 Project Site Plan. Seller will submit to Purchaser before the Firm Date substantially completed drafts or subsequent versions of the Project Site Plan prior to finalization together with all necessary environmental buffer assessments and reports, to afford Purchaser an opportunity to review the same; provided that Purchaser's review period will not exceed thirty (30) days. Seller shall cooperate with Purchaser and shall consider and address any reasonable comments or questions relating to the Project Site Plan that are reasonably and timely requested by Purchaser within such review period. Purchaser shall cooperate and respond to any reasonable

and timely request from Seller for input or comment with respect to any initial draft or subsequent version of the Project Site Plan.

## **5.5 Conduct of Business.**

5.5.1 Commencing on the Execution Date and ending on the earlier of Final Completion and the date as of which this Agreement is validly terminated by Purchaser or Seller in accordance with this Agreement, except as otherwise required or permitted hereby or consented to by Purchaser in writing, Seller shall conduct its business in the ordinary course consistent with applicable Laws, Project Permits, Prudent Operating Practices, and in accordance with this Section 5.5.

5.5.2 Without limiting the foregoing, except with respect to any Permitted Update Matter or as consented to by Purchaser in writing, which consent shall not be unreasonably withheld, conditioned, or delayed, Seller shall not, and shall not cause or permit its Affiliates with respect to the Project to:

(a) enter into any Contract or incur any obligations or Liabilities relating to the Project, the Project Assets, or the Project Site, other than (i) instruments, Contracts and documents entered into in accordance with Seller's obligations under Section 5.4 and (ii) the Contracts described on Schedule 5.5.2(a);

(b) materially modify or amend any Material Project Contract, or terminate, assign, waive, or release any rights or claims under or provide any consent under any Material Project Contract, including any modification, amendment, consent, waiver, release, or assignment that: (i) has or would reasonably be expected to have a material adverse effect on capacity, availability, operations (including costs of operations), maintenance (including the cost of maintenance), reliability, or safety (including safety of construction) of the Project; (ii) causes or would reasonably be expected to cause Mechanical Completion not to occur by the Guaranteed Mechanical Completion Date or Substantial Completion not to occur by the Guaranteed Substantial Completion Date; (iii) adversely amends any of the performance remedies or warranties applicable to the Project; or (iv) materially amends any of the defined terms or provisions from a Project Contract that are referenced in this Agreement; provided, however, that Purchaser's consent shall not be required for Seller to make any modification, amendment, consent, waiver, release, or assignment with respect any Material Project Contract that is not prohibited by sub-clauses (i)-(iv) above and which solely impacts matters that will be Excluded Liabilities; provided, further, however, that to the extent reasonably practicable, at least five (5) Business Days prior to execution, Seller shall provide Purchaser with a copy of any proposed modification, amendment, consent, waiver, release, or assignment with respect to any Project Contract, and such copy shall be materially in the form to be executed by Seller (except that, Seller shall be able to make further changes or revisions to the form of document provided to Purchaser, without Purchaser's further consent, solely to the extent that: (1) Seller's further changes or revisions are beneficial to either the Project or Purchaser, or (2) Seller's further changes or revisions are non-substantive and "clean-up" in nature) sell, lease, or otherwise dispose of, or incur or permit to exist a Lien (other than a Permitted Lien) on, any of the Project Assets;

(c) sell, lease, or otherwise dispose of, or incur or permit to exist a Lien (other than a Permitted Lien) on, any of the Project Assets;

(d) agree or consent in writing to any matter in connection with any proceeding by or before any Governmental Authority related to the Project that could reasonably be expected to result in the Project failing to meet the performance guarantees set forth in Exhibit Q as of Substantial Completion;

(e) amend or modify the Project Site Plan after the Firm Date;

(f) approve modifications, changes, alternatives or amendments to technical requirements identified in the Technical Specifications; or

(g) enter into any agreement or otherwise commit to take any actions described in the foregoing clauses.

5.5.3 Notwithstanding Section 5.5.1 or Section 5.5.2, or any other provision to the contrary in this Agreement, Seller and its Affiliate may take reasonable actions with respect to Emergency situations with notice to Purchaser as soon as practically possible.

5.5.4 Seller shall cause the Project to be designed, engineered, constructed, and commissioned in compliance with the Technical Specifications, applicable Laws, Project Permits, Prudent Operating Practices, and otherwise in compliance with the EPC Agreement.

5.5.5 If Purchaser, based on Project documentation, including the monthly progress report, the plan of the week, and the Project Schedule and updates thereto (as such documents are defined in the EPC Agreement), reasonably determines that the Project will not achieve Project Substantial Completion on or before the Guaranteed Substantial Completion Date, Purchaser may provide written notice to Seller specifying the grounds for such determination. Within ten (10) Business Days after receipt of such notice, Seller shall either (i) provide Purchaser with documentation substantiating that the Project is on schedule for timely achievement of Project Substantial Completion by the Guaranteed Substantial Completion Date or (ii) develop a plan, which shall include a resource loaded schedule and other documentation (a “Remedial Action Plan”) that demonstrates a plan for the EPC Contractor to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date. Any Remedial Action Plan shall be subject to Purchaser’s written approval, which shall not be unreasonably delayed, conditioned, or denied. Upon agreement on a Remedial Action Plan, Seller shall take all necessary steps to implement the plan with the EPC Contractor, without prejudice to Purchaser’s right to request subsequent relief under this Section 5.

## **5.6 Purchaser’s Inspection Right.**

5.6.1 General Access, Information Covenant. Subject to Section 5.6.4, commencing on the Execution Date and ending on the earlier of the Closing Date and the date as which this Agreement is validly terminated in accordance with this Agreement, Seller and its Affiliates shall provide Purchaser, its Related Persons, and its authorized Representatives access, upon reasonable prior notice, to the Project, the Project Site, the Project Assets, and the Books and Records, to the extent such access is related to Purchaser’s obligations and rights hereunder;

provided, however, that any such access shall be conducted during normal business hours and all Project work hours in such manner as to not materially and unreasonably impede the construction of the Project, including Seller's or its Affiliates' activities related to the development and construction of the Project.

5.6.2 On Site Access; Construction Activities. Subject to the terms of this Agreement including Section 5.6.4, from the Effective Date until the earlier of the Final Completion Date and the date as of which this Agreement is validly terminated in accordance with this Agreement, Seller and its Affiliates shall provide Purchaser, its Related Persons, and its authorized Representatives with the project documentation, information, and the access rights set forth in the Purchaser Access and Communications Protocol attached as Exhibit [XX] to the EPC Agreement. Purchaser may from time to time during construction, request that Seller and its Affiliates perform additional Work for the Project under the EPC Agreement. Following a request to perform additional Work, Seller and its Affiliate shall reasonably cooperate by obtaining and providing to Seller pricing and schedule impacts for such proposed additional Work. If the Parties mutually agree that Seller shall perform the additional Work, such additional Work shall: (i) constitute a Change Order in accordance with the provisions set forth in Section 5.15; and (ii) be at Purchaser's expense as an addition to the Purchase Price and with schedule adjustment, if any.

5.6.3 Communications with Contractors, Subcontractor, or Vendors. Seller shall select all Major Subcontractors and Equipment Suppliers in accordance with the EPC Agreement. Purchaser shall have the right to approve all Major Subcontractors not listed on Exhibit V and Equipment Warranty and/or Performance Guarantees Agreement that do not meet the Minimum Equipment Warranty Requirements. Notwithstanding anything to the contrary in this Agreement, between the Execution Date and the Closing Date, in no event will Purchaser or any of Purchaser's Related Persons or Representatives, who are directly involved in the Project's development and construction activities, hold any meetings with, communicate with or otherwise direct the work (directly or indirectly) of any contractors (including the EPC Contractor or any Subcontractor), suppliers (including any Equipment Suppliers), other vendors, financing parties, legal counsel, or tax advisors of Seller or its Affiliates engaged in connection with the Project, customers of Seller, or any Representatives of any Governmental Authority regarding the Project (other than with OPUC and as required or permitted hereunder), without the prior written consent of the Person(s) listed by Seller for "all other communications" in Section 13.1, which consent shall not be unreasonably delayed, conditioned, or denied; provided the site manager may condition such meeting on Purchaser identifying the subject matter topics or agenda of such meetings and subject to such meetings being scheduled, timed, and conducted in a reasonably efficient manner and not causing delay or interference in the operation of the Project, including Seller's or its Affiliates' activities related to the development and construction of the Project. At any such meeting consented to by Seller in writing, a Representative of Seller will be entitled to participate therein.

5.6.4 Safety; Compliance with Law. In connection with Purchaser's rights under this Section 5.6, Purchaser shall, and shall cause Purchaser's Related Persons and authorized Representatives, (a) to comply with all Laws and all Project Site safety and security rules and (b) not to interfere in any respect with the development, construction, ownership, and operation of the Project, including the activities of Seller, its Affiliates, the EPC Contractor, or Subcontractors. Seller may condition the access of Purchaser, its Related Persons, or its Representatives on completion of safety and security training conducted or required by the EPC Contractor, Seller, or

its Affiliates; provided that Seller shall promptly cause such training to be provided upon Purchaser's request. Seller or its applicable Representatives will have the power and authority to cause the removal of Purchaser's Related Persons or Representatives from the Project Site if such Person does not comply with such Laws or safety and security rules.

5.6.5 Risk of Loss; Indemnity. Purchaser assumes any and all risks of loss associated with or arising out of the access and other rights under this Section 5.6, and Purchaser agrees to indemnify and hold harmless Seller, its Affiliates, and their respective Representatives for any and all Losses incurred by Seller, its Affiliates, or their respective Representatives for any bodily injuries or property damage arising out of the access and other rights under this Section 5.6, in each case as a result of negligence of, or breach of Section 5.6 by, Purchaser, its Related Persons, or its Representatives.

## **5.7 Insurance.**

As set forth in Schedule 3.15 and Schedule 5.7, Seller shall maintain or cause to be maintained in full force and effect insurance coverage with respect to the Project until the Closing. From and after the Closing, Purchaser shall be solely responsible for procuring or causing to be procured insurance with respect to the Project. Purchaser will be solely responsible for providing insurance and for responding to any claims pertaining to the period after the Closing. If any claims are actually made prior to the Closing Date (or after the Closing Date with respect to claims pertaining to the period prior to the Closing Date) under any insurance policy applicable to the Project or Project Assets, then Seller shall use Commercially Reasonable Efforts at the expense of Seller to file, notice, and otherwise continue to pursue such claims and recover proceeds under the terms of such policies (but only to the extent such policies otherwise permit such recovery). Each Party shall be entitled to any proceeds of any insurance recovery resulting from claims filed under a Party's insurance policy required under this Section 5.7, other than any such proceeds that have been or will be applied to repair or replace the property subject thereto.

## **5.8 Update of Seller's Disclosure Schedule.**

From time to time, Seller may, and no later than (i) ten (10) days prior to the Firm Date, and (ii) thirty (30) days prior to the Closing Date, Seller shall, supplement or amend Seller's Disclosure Schedule previously delivered by Seller with respect to any fact, matter, condition, event, or circumstance, including any Permitted Update Matter, arising after the Execution Date which, if existing, occurring, or known on or before the Execution Date, the Firm Date, or the Closing Date, would have been required to be set forth or described in Seller's Disclosure Schedule (each, an "Update") in order for the representations and warranties in Article III to be true and correct.

5.8.1 Material Adverse Effect Update Matters. If the facts, matters, conditions, events, or circumstances described in an Update (the "Disclosure Items") are not Permitted Update Matters and have, or would be reasonably expected to have, a Seller Material Adverse Effect, and therefore would permit Purchaser to terminate this Agreement pursuant to Section 7.1.3 (Seller Material Breach; Seller Material Adverse Effect Update), then Purchaser may elect to terminate this Agreement. If Purchaser does not elect to terminate this Agreement pursuant to this Section 5.8.1 within [fifteen (15) Business Days] following notice of an Update, then Seller shall



be permitted to update the applicable Schedule(s) to properly reflect the Disclosure Items disclosed to Purchaser in such Update, and the applicable representations and warranties of Seller set forth in this Agreement subject to the Update made following the Update shall be subject to the Schedule(s) attached hereto, as modified or amended by the Disclosure Items in such Update, for purposes of satisfying the conditions set forth in Section 6.1.1 or Section 6.5.1, as applicable, and notwithstanding anything to the contrary in this Agreement (including Section 8.1) the Disclosure Items disclosed in the Update may not be the basis for any indemnification by Seller pursuant to Section 8.1.1.

5.8.2 Non-Material Adverse Effect Update Matters. If the Disclosure Items disclosed in an Update are not Permitted Update Matters and do not have, and would not reasonably be expected to have, a Seller Material Adverse Effect and therefore would not permit a termination by Purchaser under Section 7.1.3 (Seller Material Breach; Seller Material Adverse Effect Update), then such Disclosure Items shall not be grounds pursuant to Section 6.1.1 or Section 6.4.1 for Purchaser to refuse to perform its obligations to effect the Firm Date or the Closing, as applicable, and if the Closing occurs, then notwithstanding anything to the contrary in this Agreement but subject to Section 5.8.3, the Disclosure Items disclosed in such Update that constitute breaches of one or more representations or warranties of Seller in Article III as of the date hereof, the Firm Date, or the Closing Date may be the basis for indemnification by Seller pursuant to Section 8.1.1.

5.8.3 Indemnity Matters. In order for Purchaser to make an indemnity claim under Article VIII with respect to a Disclosure Item disclosed by Seller in an Update in accordance with Section 5.8.1 or Section 5.8.2, Purchaser must deliver written notice to Seller within fifteen (15) Business Days of Purchaser receiving from Seller, a written notice specifying in reasonable detail (i) the basis for such possible indemnification by Seller pursuant to Section 8.1 with respect to such Disclosure Items and, (ii) to the extent practicable, the amount of (or Purchaser's good faith estimate of) the Losses, or range of potential Losses, which would be incurred by, or imposed upon, one or more Purchaser Indemnified Parties on account of the basis for such possible claim for indemnification (each hereafter, an "Indemnity Exception"); provided, however, that in no event shall such estimate limit or restrict in any manner the amount of Losses that Purchaser Indemnified Parties may ultimately seek and recover pursuant to Article VIII. If Purchaser does not deliver such written notice to Seller within fifteen (15) Business Days of receipt of the relevant Update pursuant to Section 5.8.2 by Seller described above, Purchaser will not have the right to make an indemnity claim under Article VIII with respect to a breach of the applicable representations and warranties of Seller set forth in this Agreement to which the Disclosure Items included in such Update applied. If the Parties agree that Seller's aggregate liability under Section 8.1 with respect to Indemnity Exceptions would reasonably be expected to exceed an amount equal the Liability Cap, then Purchaser may, within fifteen (15) Business Days of the applicable Indemnity Exception being delivered to Seller, elect to terminate this Agreement in accordance with Section 7.1.5 and Seller shall be liable for the Seller Default Termination Payment pursuant to Section 7.2.2(a).

## **5.9 Delay Damages; Firm Transmission Agreements.**

5.9.1 Delay LDs. Seller shall pay Purchaser liquidated damages at a daily rate of [Amount] dollars ([XXX]) per day for Project delay ("Delay LDs") in the event the Project fails

to achieve Project Substantial Completion on or before the Guaranteed Substantial Completion Date as such date may be extended in accordance with this Agreement as a result of a Force Majeure Delay or a Purchaser Caused Delay. Delay LDs shall not exceed the Delay LD Cap.

#### 5.9.2 Firm Transmission Agreements.

(a) [Add Transmission Agreement requirements.]

### 5.10 Reports.

5.10.1 Draft Reports. Seller will submit to Purchaser substantially completed drafts or subsequent versions of the Reports prior to finalization, to afford Purchaser an opportunity to review the same; provided Purchaser's review period will not exceed fifteen (15) Business Days. Seller shall cooperate with Purchaser to consider, and, if appropriate, relay to the preparer of the Report, any reasonable comments or questions relating to such Report that are reasonably and timely requested by Purchaser within such review period. Purchaser shall cooperate and respond to any reasonable and timely request from Seller for input or comment with respect to any initial draft or subsequent version of a Report.

5.10.2 Final Reports. Prior to the Firm Date, Seller shall deliver to Purchaser the latest version of each Report following finalization. Each such Report will be deemed acceptable for purposes of Section 6.1.12 and Section 6.5.6 if it: (a) has been prepared by a qualified firm or consultant in accordance with Section 5.10.5; (b) such qualified firm or consultant has determined that it is not materially deficient in form or content in accordance with Prudent Operating Practices, the Project Permits, and applicable Law; and (c) the content of the Report does not indicate any event, result, occurrence, development, fact, change, or effect of whatever nature or kind that has or would reasonably be expected to have a Seller Material Adverse Effect.

5.10.3 Change to Reports. If after delivery to Purchaser, to Seller's Knowledge there is a material change in any findings or conclusions of a Report or facts or circumstances materially relied upon to prepare a Report that was delivered to Purchaser pursuant to Section 5.10.2, then Seller shall redeliver such Report to Purchaser in final form to reflect such change (an "Additional Report"), whereupon Purchaser will have such review and acceptance rights as contained in Section 5.10.2, which provisions shall apply *mutatis mutandis* to such Additional Report. Each Additional Report will be deemed acceptable for purposes of Section 6.1.12 and Section 6.4.6 if it satisfies the requirements in Section 5.10.2(a)–(c).

5.10.4 Reliance Letters. Seller shall (a) obtain from those Persons who prepared the Reports described on Schedule 5.10.4 and (b) use Commercially Reasonable Efforts to obtain from those Persons who prepared material Reports that are not described on Schedule 5.10.4 but that are part of the Project Assets and that Purchaser reasonably request, in each case, customary and reasonable letters or other authorizations from such Persons, which letters or other authorizations will allow Purchaser to rely on such Reports.

5.10.5 Qualified Firms and Consultants. The firms and consultants listed on Schedule 5.10.5 will be deemed to be qualified for all purposes under this Agreement. Any other firm or consultant, if such firm or consultant is to be engaged by Seller to produce a Report, will be subject to the approval of Purchaser (such approval not to be unreasonably withheld,

conditioned, or delayed). Seller shall submit any such other firm or consultant for Purchaser's approval, and such approval will be deemed given if Purchaser does not affirmatively reject such firm or consultant by notice delivered within fifteen (15) Business Days of Seller's submission, in each case indicating the basis for any such rejection in reasonable detail.

## **5.11 Certain Agreements.**

5.11.1 EPC Agreement. From the Execution Date to the Closing Date and after the Closing Date until achievement of Final Completion pursuant to Section 5.14.2, Seller shall administer its rights and obligations under the EPC Agreement in accordance with Prudent Operating Practices, including with respect to safety and security of the Project Site. Purchaser acknowledges that the EPC Contractor intends to have portions of the Work accomplished by Subcontractors qualified to perform such Work pursuant to written Subcontracts between the EPC Contractor and such Subcontractors. Purchaser acknowledges and agrees that it will not be entitled to be provided with a copy of, nor will it have any right to review, comment on, or approve, any such Subcontracts; provided, however, that Purchaser shall have the right to approve all Major Subcontractors, Major Equipment Suppliers, and all Major Subcontractor and Equipment Warranties that do not meet the Minimum Equipment Warranty Requirements (each as defined in the EPC Agreement) pursuant to Section 5.6.3.

5.11.2 Transmission Service Agreement. The Parties shall cooperate and work together in good faith to cause the Transmission Service Agreement, together with all exhibits and schedules attached thereto, to be executed on or before the start of the commissioning of the Project. Such documents shall conform specifically to the Project's details, including those that address issues relating to the Project Site, the Project Real Property Agreements, applicable Laws, and the Project Permits.

5.11.3 Long-Term Service Agreement. As of the Execution Date, the Parties shall enter into the LTSA in the form of Exhibit M, which shall be effective as of the Effective Date.

5.11.4 Equipment Warranty and Performance Guarantees Agreement. On or before the Firm Date, Seller shall enter into an Equipment Warranty and Performance Guarantees Agreement, which shall be fully assignable to Purchaser by its terms and shall be assigned by Seller to Purchaser upon Closing.

## **5.12 Interconnection Agreement and Purchaser Obligations.**

5.12.1 Interconnection Agreement. [Add Interconnection Agreement requirements.]

5.12.2 Integration Obligations. [Add integration obligations specific to the Project.] Seller shall (a) cooperate in good faith with Purchaser in respect of such transmission service (other than the transmission service arrangements under the Firm Transmission Agreements and Transmission Service Agreement) and any other arrangements, and (b) respond to reasonable requests from Purchaser for input or information with respect of such activities.

### **5.13 Permits.**

5.13.1 Permit Application Review. Seller shall provide Purchaser copies of applications for Permits (“Permit Applications”) which have not been obtained prior to the Execution Date, and Permit Applications or other documents with respect to any proposed amendment, modification, or supplement of an issued Permit, prior to submission to the applicable Governmental Authority of such Permit Application. Purchaser shall have the right to review and approve any Permit Application that relates to any post-Closing obligations or restrictions. Purchaser shall cooperate and respond to any reasonable and timely request from Seller for input or information with respect to a Permit Application. After a Permit Application is in final form, Seller will seek confirmation from Purchaser that such Permit Application is approved and such approval will be deemed given if Purchaser does not respond within fifteen (15) Business Days of submission by Seller affirmatively indicating that such Permit Application is not approved with explanation of the basis for such determination in reasonable detail.

5.13.2 Final Permits. Seller shall provide Purchaser copies of all Permits issued to Seller or the Project after the Execution Date by the applicable Governmental Authority. Each such issued Permit will be deemed sufficient to satisfy the conditions set forth in Section 6.1.10 and Section 6.4.5 if it (a) is, or will be on the Firm Date or Closing Date, as applicable, valid, binding, or in full force and effect, (b) is not conditioned on any future payments after the Closing that are not Excluded Liabilities, and (c) does not restrict the use, performance, or output of the Project as currently contemplated or has or would reasonably be expected to have an adverse and material effect on the capacity, availability, operations (including costs of operations), maintenance (including the cost of maintenance), reliability, schedule, or safety (including safety of construction) of the Project.

### **5.14 Completion Certificates; Final Completion.**

5.14.1 Completion Certificates. A Completion Milestone shall be deemed achieved when: (1) Seller delivers to Purchaser a Completion Certificate issued following achievement of any requirements for achieving such Milestone under the EPC Agreement, accompanied by any evidence provided to Seller by the EPC Contractor that such Milestone has been achieved under the EPC Agreement; (2) the Licensed Professional Engineer has issued the Independent Engineer’s Certificate; and (3) Purchaser countersigns such Completion Certificate; provided, that, in the event a Completion Certificate meets the requirements of subparts (1) and (2) above, Purchaser shall countersign the Completion Certificate within five (5) Business Days and provide a countersigned copy to Seller. Seller shall be responsible for keeping Purchaser apprised of progress made towards the Project’s Milestones and delivering copies of the Completion Certificates to Purchaser in accordance with the Purchaser Access and Communications Protocol attached as Exhibit [XX] to the EPC Agreement. If a Completion Certificate fails to meet the forgoing requirements, Purchaser may deliver to Seller a rejection of such Completion Certificate together with Purchaser’s reasonable basis for asserting that such Completion Milestone has not been achieved. If Purchaser fails to accept or reject any Completion Certificate within the foregoing timeframe, Purchaser shall be deemed to have accepted such Completion Certificate. If Purchaser rejects any Completion Certificate, the Parties shall cooperate

in good faith to address or correct any issues related to Purchaser's rejection; provided, that Seller may continue to perform, or cause to be performed, the Work in its reasonable judgment while the Parties work to address or correct any such issues. If the Parties are unable to agree within ten (10) Business Days for all Completion Milestones, in each case, after submission by Seller to Purchaser of the applicable Completion Certificate, whether such Completion Milestone has been achieved, or on the measures required to achieve such Completion Milestone, either Party may initiate a dispute pursuant to Article XI. Each Completion Milestone shall not be achieved until the Completion Certificate for such Completion Milestone has been accepted or deemed accepted pursuant to this Section 5.14.1.

5.14.2 Final Completion. From and after Closing through Final Completion, Purchaser shall provide Seller and its Affiliates and their respective Representatives non-exclusive rights of access, ingress, and egress to and from the Project Site at such times as may be reasonably required in connection with the performance of Seller's obligations pursuant to this Agreement and the EPC Agreement. To the extent needed for the purpose of achieving Final Completion, and until Final Completion has occurred, Seller will continue to be responsible for and have control over the completion of the Project and access to the Project Site in all day-to-day construction, commissioning and startup activities. Effective as of the Closing Date, Seller shall be designated by Purchaser to act as its agent under the Project Contracts and in such capacity to manage the Project Contracts with respect to the achievement of Final Completion, including the payment of contractors and suppliers. In furtherance of the foregoing, Purchaser hereby grants to Seller the authority and right to assert and control (at the sole cost and expense of Seller) any Claims that "Owner" may have against the EPC Contractor arising out of the EPC Agreement for matters related to the EPC Contractor's achievement of Final Completion and Claims against counterparties to the other Project Contracts for matters related to the achievement of Final Completion, provided that, with respect to any such Claim that rises to a formal proceeding, Seller shall: (a) promptly notify Purchaser of such Claim and (b) provide Purchaser from time to time with any information that Seller obtains with respect to any such Claims. In the performance of its obligations pursuant to this Section 5.14.2, Seller shall cause the EPC Contractor and any other counterparty to not directly or indirectly create, incur, assume or suffer to be created by it or any of their Representatives any Lien on the Project or Project Assets (except for the inchoate lien rights of such Person) and shall cause the EPC Contractor or counterpart to pay, discharge, and cause to be released of record any such Lien pursuant to and in accordance with the EPC Agreement. At all times prior to Final Completion, Purchaser shall transfer any amounts received by Purchaser under any Project Contract, including liquidated damages, to Seller, subject to a right of setoff with respect to undisputed amounts owed by Seller to Purchaser but not yet paid. On and after the date of Final Completion, to the extent any such amounts received by Purchaser under any Project Contract, including liquidated damages, relate to matters for which Seller is obligated to make a payment to Purchaser, Purchaser shall transfer such amounts to Seller, subject to a right of setoff with respect to undisputed amounts owed by Seller to Purchaser but not yet paid.

## **5.15 Schedule and Cost Relief Procedures for Change Events; Purchaser Initiated Changes.**

### **5.15.1 Schedule and Cost Relief Procedures for Change Events.**

(a) Required Notice. If a Change Event has occurred that results in a material delay or a material increase in Seller or EPC Contractor's costs of performing the Work, then Seller, or as applicable, EPC Contractor, shall be entitled to a Change Order as provided in this Section 5.15.1; provided that as a condition precedent to any schedule or Purchase Price relief under this Section 5.15.1, Seller shall provide Purchaser written notice describing the particulars of the occurrence of any such Change Event (together with reasonable supporting documentation, to the extent available) within fifteen (15) Business Days after Seller has knowledge, or reasonably should have knowledge, of the effect of such Change Event; and provided further that Seller may provide notice after such fifteen (15) Business Days, but Seller shall not be entitled to schedule or cost relief under this Section 5.15.1 until the date Seller actually provides notice to Purchaser, and schedule or cost relief with respect to periods before such notice is given shall be deemed waived by Seller and EPC Contractor.

(b) Duty to Mitigate. Seller shall take such actions as are reasonably necessary and in accordance with Prudent Operating Practices to avoid, mitigate, and minimize the impact of any Change Event and any delay to achieving Mechanical Completion or Substantial Completion. If requested by Purchaser, Seller shall furnish to Purchaser a mitigation plan describing the actions that are being implemented to mitigate or reduce any delays or cost increases not later than thirty (30) days after Seller has knowledge of the effect of the potential Change Event. In entering into each Project Contract, Seller shall use Commercially Reasonable Efforts to allocate the impact of Change Events (other than Purchaser Caused Delay) or Changes in Law to the counterparty under such Project Contract.

(c) Schedule Relief. Any extension of the Project Schedule due to a Change Event will be of no greater scope and of no longer duration than is reasonably required; provided, however, Seller shall be entitled to additional schedule relief in the event that a Change Event causes Seller to incur additional outages or otherwise results in compounding Force Majeure delays that it would not otherwise have incurred but for the occurrence of the Change Event. Seller must demonstrate that any Change Event resulting in such actual or reasonably anticipated schedule delay will impact Seller's ability to achieve the Guaranteed Substantial Completion Date, notwithstanding Seller's compliance with Section 5.15.1(b). Seller shall continue to furnish timely regular written reports with respect thereto (together with reasonable supporting documentation of the anticipated impacts resulting from such Change Event to the extent available) during the continuation of any such Change Event. Subject to the requirements set forth in this Section 5.15.1, the Guaranteed Substantial Completion Date and Outside Substantial Completion Date shall be extended on a day-for-day basis to the extent that Seller is entitled to schedule relief for such Change Event; provided, however, that in no event will the Outside Substantial Completion Date be delayed beyond the Long-Stop Date, except as the Long-Stop Date may be further extended for Purchaser Caused Delays. To the extent Seller is entitled to any schedule relief due to a Change Event, Seller shall initiate a Change Order, with reasonable supporting documentation, to effectuate such schedule relief.

(d) Cost Relief. Subject to Section 5.15.1(e), if a Change Event results in potential cost relief, then the notice provided for in Section 5.15.1(a) shall include at a minimum (i) a description of the event(s) warranting a proposed Purchase Price increase under the terms and conditions of this Agreement, (ii) a description of the cost impact of the event(s) and either the steps that Seller has taken or will take to manage such cost impacts or a statement or explanation

that such cost impacts are outside of Seller's control and that there are no such steps Seller can take, and (iii) reasonable supporting evidence documenting the actual cost impact. Subject to the allocation of cost relief set forth in Section 5.15.1(e), Seller shall be entitled to an increase in the Purchase Price commensurate with any increases in the [direct costs] to perform the Work or in performing under any Project Contract (solely to the extent such Project Contract provides for a Contractor to claim a price increase from Seller) resulting from a Change Event; provided, however, that any such cost increases shall not include markup by Seller for profit or indirect overhead costs.

(e) Change Orders. Purchaser shall have fifteen (15) Business Days to review Seller's proposed Purchase Price increase and/or schedule relief and may dispute (i) whether Seller complied with its obligations hereunder related to such costs or the amount of such costs (but not the allocation thereof, which is set forth in this Section 5.15.1(e), or (ii) whether Seller complied with its obligations hereunder related to such delay or the duration of schedule relief. If Purchaser disputes either the amount of such costs or Seller's compliance with its obligations hereunder related to such costs as provided in the preceding sentence, during such fifteen (15) Business Day period the Parties shall negotiate in good faith and Seller shall provide such additional documentation and information concerning such costs as Purchaser may reasonably request. If the Parties agree to the amount of such costs within the fifteen (15) Business Day period, the Parties shall enter into a Change Order to adjust the Purchase Price, subject to the cost allocation set forth in Section 5.15.1(e). If the Parties do not agree upon the amount of such costs or schedule relief within the fifteen (15) Business Day period, then either Party may treat the disagreement as a Dispute subject to ARTICLE XI. Change Orders are only binding upon a Party when executed by an authorized representative of such Party. All Change Orders shall be originated, considered, and made effective only in accordance with this Section, and must be utilized notwithstanding that a reference to a Change Order may not be in other applicable sections of this Agreement pertaining to the same.

#### 5.15.2 Purchaser Initiated Changes.

(a) Purchaser may request changes in the Work. If Purchaser so desires to change the Work, it shall submit a change request to Seller in writing setting forth in reasonable detail the nature of the requested change. Upon receipt of a change request, Seller shall initiate discussions with the EPC Contractor and any relevant Subcontractors and, within fifteen (15) Business Days after Purchaser's request, return a proposal to Purchaser that includes:

(i) The proposed increase or decrease, if any, in the Purchase Price that would result from such a change. In connection therewith, Seller acknowledges and understands that Purchaser is unlikely to implement any such requested change in the Work if it would impact Seller's ability to achieve Substantial Completion by the Guaranteed Substantial Completion Date. Therefore, to the extent applicable, and unless otherwise instructed by Purchaser, any such proposal provided by Seller shall include any incremental increase in the Purchase Price necessary to accelerate the Work and avoid delaying any Milestone; and

(ii) Such other supporting data and documentation reasonably requested by Purchaser in its change request.

(b) Purchaser shall, within ten (10) Business Days following its receipt of such proposal, notify Seller as to whether Purchaser agrees with such proposal and wishes to accept Seller's proposal:

(i) If Purchaser agrees with such proposal and wishes to accept the same, Purchaser and Seller shall execute a Change Order reflecting such proposal;

(ii) If Purchaser disagrees with Seller's proposal, then such requested change shall be deemed withdrawn by Purchaser;

(c) If Purchaser does not respond to Seller's proposal within the preceding ten (10) Business Day time period, Purchaser shall be deemed to have withdrawn its requested change.

(d) In no event shall Seller be required to perform any such requested change in the Work unless a Change Order with respect thereto has been executed by both Parties.

#### **5.16 Performance Security.**

No later than thirty (30) days after the Effective Date, Seller shall deliver to PGE the Seller's Letter of Credit and thereafter maintain it in full force and effect until the third (3<sup>rd</sup>) anniversary of the Closing Date. Unless otherwise agreed in writing by the Parties, the Seller's Letter of Credit will be terminated, and Purchaser shall promptly return the same to Seller on the third (3<sup>rd</sup>) anniversary of the Closing Date. If this Agreement is terminated by either or both Parties pursuant to Section 7.1.1 (Mutual Consent), Section 7.1.2 (Law), Section 7.1.4 (Purchaser Material Breach), Section 7.1.6 (Firm Date) (if due solely to a Seller Non-Fault Event or a Purchaser Non-Fault Event), Section 7.1.7 (Closing Date) (if due solely to a Seller Non-Fault Event or a Purchaser Non-Fault Event), or Section 7.1.8 (Purchaser Bankruptcy), then Purchaser shall promptly return the Seller's Letter of Credit to Seller.

#### **5.17 Licensed Professional Engineer.**

Seller and Purchaser will jointly engage the Licensed Professional Engineer to perform the services assigned to such Licensed Professional Engineer under this Agreement. All costs relating to the services of the Licensed Professional Engineer shall be shared equally by Purchaser and Seller. The Licensed Professional Engineer shall be from the list of independent engineers, to be mutually agreed to by the Parties, provided in Schedule 5.10.5.

#### **5.18 Performance Guarantees.**

The Project Equipment shall meet the performance guarantees set forth in Exhibit Q as of Substantial Completion. In the event the Project Equipment fails to meet any such performance guarantees, Seller shall pay the damages that are set forth in Exhibit Q; provided, however, if the Project Equipment fails to meet a Technical Specification that is not otherwise covered by the provisions of Exhibit Q (a "Technical Specification Failure"), Seller shall first take Commercially Reasonable Efforts to correct such Technical Specification Failure, and if Seller is unable to correct the Technical Specification Failure within a [30] day period, the Parties, in good faith, shall negotiate potential buydown provisions to compensate Purchaser for the Technical Specification Failure. Purchaser's exclusive remedies for Seller's failure to meet such performance



guarantees shall be the remedies set forth in Exhibit Q, Section 2.2.1, Section 5.9.2, and Section 7.1.5.

**5.19 Oregon House Bill 2021 Compliant Labor.**

Project labor must fully comply with the requirements of Oregon House Bill 2021, as applicable. Seller must have, and Seller shall endeavor to cause the EPC Contractor and each Subcontractor to have, policies in place that are designed to limit or prevent workplace harassment and discrimination. Pursuant to ORS 757.306 Seller will within 30 days from the date construction begins, provide a copy of the attestation or declaration or executed project labor agreement to the Oregon Department of Energy.

**ARTICLE VI  
CONDITIONS TO CLOSING; CONDITIONS TO FIRM DATE**

**6.1 Purchaser's Conditions Precedent.**

The obligations of Purchaser hereunder to execute or deliver the items it is required to execute or deliver pursuant to Section 2.5.1 and to complete the Closing are subject to the fulfillment, at or before the Outside Closing Date, of each of the following conditions (all or any of which may be waived (if legally permissible) in whole or in part by Purchaser in its sole discretion):

6.1.1 Representations and Warranties. Each of the representations and warranties made by Seller in Article III are true and correct in all respects on and as of the Closing Date with the same force and effect as though made by Seller on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects), except (a) to the extent that the failure of such representations and warranties (other than Fundamental Seller Representations) to be true and correct would not, individually or in the aggregate, have a Seller Material Adverse Effect, and (b) the Fundamental Seller Representations must be true and correct in all respects.

6.1.2 Performance. Seller has performed and complied in all material respects with the agreements, covenants, and obligations required by this Agreement to be so performed or complied with by Seller at or before the Closing.

6.1.3 Law. There is not in effect on the Closing Date any Law restraining, enjoining, or otherwise prohibiting or making illegal the Seller's consummation of the transactions contemplated by this Agreement.

6.1.4 Required Approvals. The Required Approvals have been duly obtained, made, or given and are in full force and effect; provided, however, that the absence of any rehearing or appeal and the expiration of any rehearing or appeal period with respect to any of the Required Approvals shall not be a requirement of this Closing Date Condition.

6.1.5 Seller's Consents. All of Seller's Consents necessary for the completion of the transactions contemplated by this Agreement to occur have been duly obtained, made, or given and are in full force and effect.

6.1.6 Deliveries. Seller has executed and delivered, or caused to be executed and delivered (as applicable), to Purchaser the items set forth in Section 2.5.2.

6.1.7 Status of the Project. The Project has achieved Mechanical Completion, and Purchaser has received the Mechanical Completion Punch List. None of the Project Equipment or other components of the Project have been energized.

6.1.8 Real Estate Matters.

(a) Title Curative Matters. Prior to the Closing Date, Seller has delivered to Purchaser true, correct, and complete copies of Curative Documents or other forms through which Seller has cured the Initial Title Objections and the Closing Date Title Objections in accordance with the standards and processes described in Section 5.4.1 and Section 5.4.2.

(b) Title Policy. Seller has caused the Title Company to issue to Purchaser the Title Policy.

(c) Closing Date Estoppels. Prior to the Closing Date, Seller shall have obtained and provided to Purchaser an estoppel certificate for each of the Project Real Property Agreements listed on Schedule 6.1.8(c) (the "Closing Date Estoppels"), which Closing Date Estoppels shall be substantially and in all material respects in the form of Exhibit I and shall be properly executed by the applicable landlord or grantor under the Project Real Property Agreements.

6.1.9 No Seller Material Adverse Effect. No Seller Material Adverse Effect exists as of the Closing Date.

6.1.10 Project Permits. The Project Permits required to be transferred to Purchaser as of Closing, or other Permits (other than the Purchaser's Consents and the Required Approvals) required to be issued to Purchaser as of the Closing, in each case, under applicable Law, shall have been so transferred or issued in accordance with applicable Law, and shall be valid and binding and in full force and effect.

6.1.11 Phase I ESA. Purchaser has received a Phase I Environmental Site Assessment ("ESA") for the Project Site, current and valid on the Closing Date under ASTM Standard Practice E1527-13 for ESAs, addressed to Purchaser as the user, or accompanied by a reliance letter in form and substance reasonably satisfactory to Purchaser.

6.1.12 Reports. Seller has delivered to Purchaser each of the Firm Date Reports and any Additional Reports in accordance with Section 5.10, and each such Firm Date Report or Additional Report satisfies or is deemed to satisfy the requirements of Section 5.10.2(a)–(c) in accordance with Section 5.10.

6.1.13 O&M Services. The Operator under the LTSA shall have mobilized to the Project Site and shall be ready to commence services.

## **6.2 Seller's Conditions Precedent.**

The obligations of Seller hereunder to execute or deliver the items it is required to execute or deliver pursuant to Section 2.5.2 and to complete the Closing are subject to the fulfillment, at or before the Outside Closing Date, of each of the following conditions (all or any of which may be waived (if legally permissible) in whole or in part by Seller in its sole discretion):

6.2.1 Representations and Warranties. Each of the representations and warranties made by Purchaser in Article IV are true and correct in all respects on and as of the Closing Date with the same force and effect as though made by Purchaser on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects), except (a) to the extent that the failure of such representations and warranties (other than Fundamental Seller Representations) to be true and correct would not, individually or in the aggregate, have a Purchaser Material Adverse Effect, and (b) the Fundamental Purchaser Representations must be true and correct in all respects.

6.2.2 Performance. Purchaser has performed and complied in all material respects with the agreements, covenants, and obligations required by this Agreement to be so performed or complied with by Purchaser at or before the Closing.

6.2.3 Law. There is not in effect on the Closing Date any Law restraining, enjoining, or otherwise prohibiting or making illegal the Purchaser's consummation of the transactions contemplated by this Agreement.

6.2.4 Required Approvals. The Required Approvals have been duly obtained, made, or given and shall be in full force and effect.

6.2.5 Purchaser's Consents. All of the Purchaser's Consents have been duly obtained, made, or given and are in full force and effect.

6.2.6 Deliveries. Purchaser has (a) executed and delivered, or caused to be executed and delivered (as applicable) to Seller the items set forth in Section 2.5.1 and (b) paid the Closing Payment.

6.2.7 No Purchaser Material Adverse Effect. No Purchaser Material Adverse Effect exists as of the Closing Date.

6.2.8 Transmission Service Agreement. The Transmission Service Agreement has been executed by the parties thereto and is in full force and effect and Seller has obtained all required FERC approvals to be able to provide transmission service to Purchaser under the Transmission Service Agreement.

6.2.9 Reserved.

### **6.3 Firm Date Conditions of Purchaser and Seller.**

The occurrence of the Firm Date and the commencement of the Parties' respective agreements, covenants, and obligations under this Agreement to occur between the Firm Date and the Closing are subject to the fulfillment, on or prior to the Outside Firm Date, of each of the following conditions (all or any of which may be waived (if legally permissible) in whole or in part by each Party in its sole discretion):

6.3.1 Law. There is not in effect on the Firm Date any Law restraining, enjoining, or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement.

#### **6.3.2 Certain Consents.**

(a) FERC. If either Party has issued written notice pursuant to Section 5.2.1 that such FERC Consents are to be obtained prior to the Firm Date, such Consents have been duly obtained, made, or given and shall be in full force and effect.

(b) Firm Date Consents. All Firm Date Required Consents have been duly obtained, made, or given and are full force and effect.

### **6.4 Purchaser's Firm Date Conditions.**

The occurrence of the Firm Date and the commencement of Purchaser's agreements, covenants, and obligations under this Agreement to occur between the Firm Date and the Closing are subject to the fulfillment, on or prior to the Outside Firm Date, of each of the following conditions (all or any of which may be waived (if legally permissible) in whole or in part by Purchaser in its sole discretion):

6.4.1 Accuracy of Sellers' Representations and Warranties. Each of the representations and warranties made by Seller in Article III are true and correct in all respects on and as of the Firm Date with the same force and effect as though made by Seller on and as of the Firm Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date), except (a) to the extent that the failure of such representations and warranties (other than Fundamental Seller Representations) to be true and correct would not, individually or in the aggregate, have a Seller Material Adverse Effect, and (b) the Fundamental Seller Representations must be true and correct in all respects.

6.4.2 Performance. Seller has performed and complied in all material respects with the agreements, covenants, and obligations required by this Agreement to be so performed or complied with by Seller at or before the Firm Date.

6.4.3 No Seller Material Adverse Effect. No Seller Material Adverse Effect exists as of the Firm Date.

6.4.4 Seller Firm Date Certificate. Seller has delivered to Purchaser the Seller Firm Date Certificate in accordance with Section 6.7

6.4.5 Permits. Seller has obtained and provided to Purchaser all Firm Date Permits issued in the name of Seller or the Project, which are all in full force and effect, fully assignable and transferrable to Purchaser, and satisfy the requirements in Section 5.13.

6.4.6 Reports. Seller has delivered to Purchaser each of the Firm Date Reports, and any Additional Reports in accordance with Section 5.10, and each such Firm Date Report or Additional Report satisfies or is deemed to satisfy the requirements of Section 5.10.2(a)–(c) in accordance with Section 5.10.

6.4.7 EPC Agreement. The Seller has provided Purchaser with a fully executed EPC Agreement in the form of Exhibit E.

6.4.8 Notice to Proceed. Seller is ready to issue a full notice to proceed pursuant to the EPC Agreement.

6.4.9 Material Project Contracts. Seller has executed (1) the EPC Agreement; (2) the Interconnection Agreement; and (3) [reference Module/Inverter/Battery Supply Agreements].

6.4.10 Real Estate Matters.

(a) Title Curative Matters. Seller has delivered to Purchaser] the Title Commitment(s) and ALTA Survey as required by Section 5.4.1.

(b) Project Site Plan. Prior to the Firm Date, Seller shall have delivered to Purchaser the Project Site Plan in accordance with Section 5.4.6 .

6.4.11 Seller's Letter of Credit. The Seller's Letter of Credit remains in full force and effect.

6.4.12 Seller's Firm Date Certificate. Seller has delivered to Purchaser the Purchaser Firm Date Certificate in accordance with Section 6.8.

## **6.5 Seller's Firm Date Conditions.**

The occurrence of the Firm Date and the commencement of Seller's agreements, covenants, and obligations under this Agreement to occur between the Firm Date and the Closing are subject to the fulfillment, on or prior to the Outside Firm Date, of each of the following conditions (all or any of which may be waived (if legally permissible) in whole or in part by Seller in its sole discretion):

6.5.1 Accuracy of Purchaser's Representations and Warranties. Each of the representations and warranties made by Purchaser in Article IV is true and correct in all respects on and as of the Firm Date with the same force and effect as though made by Purchaser on and as of the Firm Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date), except (a) to the extent that the failure of such representations and warranties (other than Fundamental Seller Representations) to be true and correct would not, individually or in the aggregate, have a Purchaser Material Adverse Effect, and (b) the Fundamental Purchaser Representations must be true and correct in all respects.

6.5.2 Performance. Purchaser has performed and complied in all material respects with the agreements, covenants, and obligations required by this Agreement to be so performed or complied with by Purchaser at or before the Firm Date.

6.5.3 No Purchaser Material Adverse Effect. No Purchaser Material Adverse Effect exists as of the Firm Date.

6.5.4 Purchaser Firm Date Certificate. Purchaser has delivered to Seller the Purchaser Firm Date Certificate in accordance with Section 6.6.

#### **6.6 Purchaser Obligation to Deliver Purchaser Firm Date Certificate.**

Within five (5) Business Days following the satisfaction or waiver of the Firm Date Conditions set forth in Section 6.3 and Section 6.4, Purchaser shall deliver to Seller a copy of a certificate substantially and in all material respects in the form of Exhibit J-1 (the “Purchaser Firm Date Certificate”) duly signed by an authorized officer of Purchaser. The provision by Purchaser to Seller of the Purchaser Firm Date Certificate will be evidence of Purchaser’s acknowledgement of the satisfaction, or the waiver by Purchaser, of the Firm Date Conditions set forth in Section 6.3 and Section 6.4. Seller shall issue the full notice to proceed pursuant to the EPC Agreement within three (3) Business Days after receipt of the Purchaser Firm Date Certificate.

#### **6.7 Seller Obligation to Deliver Seller Firm Date Certificate.**

Within five (5) Business Days following the satisfaction or waiver of the Firm Date Conditions set forth in Section 6.3 and Section 6.5, Seller shall deliver to Purchaser a copy of a certificate substantially and in all material respects in the form of Exhibit J-2 (the “Seller Firm Date Certificate”) duly signed by an authorized officer of Seller. The provision by Seller to Purchaser of the Seller Firm Date Certificate will be evidence of Seller’s acknowledgement of the satisfaction, or the waiver by Seller, of the Firm Date Conditions set forth in Section 6.3 and Section 6.5.

#### **6.8 Firm Date Remedies.**

Each Party acknowledges that failure to deliver the Purchaser Firm Date Certificate pursuant to Section 6.7 or Seller Firm Date Certificate pursuant to Section 6.8 could cause the other Party or its Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore, each Party agrees that the non-breaching Party shall be entitled to seek injunctive relief to the extent allowed by Law to prevent breaches of this Section 6.8 and to specifically enforce the terms and provisions hereof.

### **ARTICLE VII TERMINATION**

#### **7.1 Termination Prior to Closing.**

This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, prior to the Closing:

7.1.1 Mutual Consent. By mutual written consent of the Parties;

7.1.2 Law. By Seller or Purchaser upon written notice to the other Party, in the event that any final and non-appealable Law becomes effective which restrains, enjoins, or otherwise prohibits or makes illegal the consummation of the transactions contemplated by this Agreement, provided that (a) each Party shall use Commercially Reasonable Efforts to appeal any such Law which is appealable and pursue such appeal, where such Law restrains, enjoins, or otherwise prohibits or makes illegal the consummation of such Party's obligations contemplated by this Agreement and (b) neither Party may terminate this Agreement pursuant to this Section 7.1.2 if such final and non-appealable Law resulted from such Party's failure to fulfill in any material respect any obligation, agreement, or covenant under this Agreement required to be fulfilled by such Party on or prior to the Closing Date;

7.1.3 Seller Material Breach; Seller Material Adverse Effect Update. By Purchaser upon written notice to Seller, if: (a) there has been a breach by Seller of any representation, warranty, obligation, covenant, or agreement contained in this Agreement or any Ancillary Agreement to which it is a party which would result in a failure of, or inability of Seller to satisfy, any condition set forth in Section 6.1, Section 6.3 or Section 6.4, including any failure of Seller to enforce applicable rights and remedies against the EPC Contractor under the EPC Agreement, and such breach has not been cured within sixty (60) days following Seller's receipt of written notice of such breach, provided that such sixty (60)-day period will be extended if: (i) such breach is reasonably capable of cure before the Outside Closing Date and curing such breach reasonably requires more than sixty (60) days; and (ii) Seller commences such cure within such sixty (60)-day period and diligently pursues and completes such cure before the Outside Closing Date; or (b) an Update is delivered to Purchaser that individually or together with other Updates discloses one or more Disclosure Items that has had or would reasonably be expected to have a Seller Material Adverse Effect and Purchaser delivers written notice of termination to Seller;

7.1.4 Purchaser Material Breach. By Seller upon written notice to Purchaser, if there has been a breach by Purchaser of any representation, warranty, obligation, covenant, or agreement contained in this Agreement or any Ancillary Agreement to which it is a party which would result in a failure of, or inability of Purchaser to satisfy, any condition set forth in Section 6.2, Section 6.3, or Section 6.5, and such breach has not been cured within sixty (60) days following Purchaser's receipt of written notice of such breach, provided that such sixty (60)-day period shall be extended if: (a) such breach is reasonably capable of cure before the Outside Closing Date and curing such breach reasonably requires more than sixty (60) days; and (b) Purchaser commences such cure within such sixty (60)-day period and diligently prosecutes and completes such cure before the Outside Closing Date;

7.1.5 Indemnity Liability Cap. By Seller or Purchaser pursuant to and in accordance with the provisions of Section 5.8.3;

7.1.6 Firm Date. At any time after the Outside Firm Date, by Purchaser upon written notice to Seller, if the Firm Date has not occurred by the Outside Firm Date because one of the conditions precedent set forth in Section 6.4 or Section 6.5 has not been satisfied, or by

Seller, if the Firm Date has not occurred by the Outside Firm Date because one of the conditions precedent set forth in Section 6.4 or Section 6.5 has not been satisfied;

7.1.7 Outside Substantial Completion Date. At any time after the Outside Substantial Completion Date, by Purchaser, upon written notice to Seller if Substantial Completion has not occurred by the Outside Substantial Completion Date, as such Outside Substantial Completion Date may be extended pursuant to the terms of this Agreement;

7.1.8 Purchaser Bankruptcy. By Seller upon written notice to Purchaser, upon the Bankruptcy of Purchaser;

7.1.9 Seller Bankruptcy. By Purchaser upon written notice to Seller, upon the Bankruptcy of Seller;

7.1.10 Outside Effective Date. By Seller or Purchaser upon written notice to the other Party, if in the case Section 2.1.1(a) and (b), either Party fails to satisfy the requirements of Section 2.1.1(a) or (b), as applicable, on or before the Outside Effective Date;

7.1.11 Extended Force Majeure.

(a) By Seller upon written notice to Purchaser, if any Material Project Contract is terminated pursuant to the Material Project Contract due to the occurrence of an Extended Force Majeure Event.

(b) If Seller exercises its right to terminate this Agreement pursuant to Section 7.1.11(a), then for a period of two (2) years from the effective date of such termination of this Agreement (the “ROFO Period”), Seller shall, not enter into any agreement to sell, assign or otherwise transfer the Project Assets or one hundred percent (100%) of the equity interests in Seller to any third party, unless Seller first provides Purchaser a right of first offer to acquire (i) one hundred percent (100%) of the equity interests in Seller, or (ii) all of Seller’s right, title, and interest in the Project Assets, as applicable, pursuant to a written notice (the “ROFO Notice”). If Purchaser submits an offer (a “ROFO Offer”) to Seller on or before the deadline for receiving such offer, then the Parties will thereafter negotiate in good faith on an exclusive basis for a period of ninety (90) days, or such longer period as may be agreed to by the Parties (the “ROFO Negotiation Period”), the terms and conditions for the purchase and sale of the Project Assets or equity interests, as applicable. If the Parties fail to enter into a binding written agreement within such time period, then Seller may thereafter sell, assign or otherwise transfer (i) one hundred percent (100%) of the equity interests in Seller, or (ii) the Project Assets, as applicable, to any third party and to enter into any agreements in connection therewith, provided that, for a period of one hundred eighty (180) days after the end of the ROFO Negotiation Period, Seller may only enter into such agreements if (a) the price paid and other consideration provided by the party acquiring the Project Assets or equity interests, as applicable, is equal to or greater than the price and other consideration set forth in Purchaser’s ROFO Offer (or the last price and consideration offered by Purchaser during the negotiations between the Parties) and (b) the other terms and conditions (taken as a whole) are not more favorable to the party acquiring the Project Assets or equity interests, as applicable, than those described in Purchaser’s ROFO Offer (or the last set of terms and conditions offered by Purchaser during the ROFO Negotiation Period); or



7.1.12 Letter of Credit Default. By Purchaser if Seller's Letter of Credit is subject to a Letter of Credit Default, and Seller does not cure the Letter of Default by delivering to Purchaser a replacement Letter of Credit that satisfies the requirements of this Agreement within three (3) Business Days after the Letter of Credit Default occurs.

## **7.2 Effect of Termination or Breach .**

7.2.1 Rights and Remedies Provided for In Agreement. If this Agreement is validly terminated pursuant to Section 7.1, then all further obligations of the Parties under this Agreement shall be terminated without further liability of any Party to the other Party, except for the rights and obligations of the Parties in this Section 7.2.1, Section 5.16 (Performance Security), Section 5.6.5 (Risk of Loss; Indemnity), Article VIII (Indemnification), Section 10.2 (No Other Representations), Article XI (Dispute Resolution), Section 12.2 (Limitation of Liability), Section 12.4 (Representatives and Affiliates), Article XIII (Miscellaneous), and Article I with respect to the Rules of Interpretation and any defined terms contained in the surviving provisions, each of which shall continue to apply following any such termination. Notwithstanding anything to the contrary contained herein, except as expressly set forth herein, termination of this Agreement shall not release any Party from any liability for any breach by such Party of the terms and provisions of this Agreement prior to such termination, and such other Party will be entitled to pursue any rights or remedies available at law or in equity.

### **7.2.2 Termination Remedies.**

(a) No Fault Termination. If this Agreement is terminated by either or both Parties pursuant to Section 5.15.1(e) (Total Allocable Cost Relief), Section 7.1.1 (Mutual Consent), Section 7.1.2 (Law), Section 7.1.6 (Firm Date) (only by Seller if due solely to a Seller Non-Fault Event, and only by Purchaser if due solely to a Purchaser Non-Fault Event), Section 7.1.7 (Outside Substantial Completion Date) (only by Seller if due solely to a Seller Non-Fault Event, and only by Purchaser if due solely to a Purchaser Non-Fault Event), Section 7.1.10 (Outside Effective Date), Section 7.1.11 (Extended Force Majeure), Section 7.1.13 (Price Adjustment), or Section 7.1.14 (Long-Stop Date), then (i) Purchaser shall have the step-in rights provided for in Section 7.2.2(c) below, and (ii) (a) Purchaser shall pay Seller, to the extent not already paid, all Milestone Payments required to have been paid through the date of such termination; (b) to the extent not covered by such Milestone Payments, Purchaser shall pay to Seller an amount equal to Seller's documented third party costs in developing, installing, constructing, commissioning, testing and completing the Project through the date of termination, plus all of Seller's documented third party costs, including but not limited to break fees and unwind and demobilization costs (provided that Seller shall reasonably coordinate with Purchaser to effectuate such unwind and demobilization) ("Seller's Full Cost"); and (c) to the extent such Milestone Payments made by Purchaser to Seller exceed Seller's Full Cost, Seller will refund to Purchaser the difference between the amount paid by Purchaser for Milestone Payments and Seller's Full Cost.

(b) Seller Default Termination Payment for Pre-Closing Termination. If this Agreement is terminated by Purchaser prior to Closing pursuant to Section 7.1.3 (Seller Material Breach; Seller Material Adverse Effect Update), Section 7.1.6 (Firm Date) (other than if due solely to a Seller Non-Fault Event), Section 7.1.7 (Outside Substantial Completion Date) (other than if

due solely to a Seller Non-Fault Event), Section 7.1.9 (Seller Bankruptcy), or Section 7.1.12 (Performance Security Default), then Seller shall (i) refund all amounts previously paid by Purchaser to Seller hereunder, which amount shall not be subject to or counted toward the Liability Cap, and (ii) pay a termination payment to Purchaser, as liquidated damages, in an amount equal to [Amount] ([\$XXX]) per kW of the Planned Project Size, reduced by Delay LDs actually paid to Purchaser, in the event Purchaser does not exercise its step-in rights pursuant to Section 7.2.2(c) below (together (i) and (ii), as applicable, the “Seller Default Termination Payment”). Seller shall pay to Purchaser the Seller Default Termination Payment promptly, and in any case not more than ten (10) Business Days after termination of this Agreement, in accordance with the terms of this Article VII. Purchaser shall be entitled to recover any Seller Default Termination Payment due under this Section 7.2.2(a) in any action at law or in equity, including under the Seller’s Letter of Credit and under other performance security required under Section 5.16.

(c) Purchaser Pre-Closing Step-In Rights. In the case of any pre-Closing termination, except with respect to termination by Seller pursuant to Section 7.1.4 (Purchaser Material Breach), Section 7.1.6 (Firm Date) (other than if due solely to a Purchaser Non-Fault Event), or Section 7.1.8 (Purchaser Bankruptcy) (each of which shall be subject to the provisions of Section 7.2.2(d) below), Purchaser shall have the right, but not the obligation, to elect to require Seller to transfer to Purchaser all of the Project Assets upon payment by Purchaser to Seller of any outstanding deposits, costs, fees, or other expenses previously-incurred by Seller for the Project Assets (and not already paid for by Purchaser) (the “Default Transfer”). Purchaser may exercise this right by giving written notice thereof to Seller contemporaneously with Purchaser’s notice terminating this Agreement. Seller shall ensure that Seller’s rights and obligations the EPC Agreement and under each Material Project Contract to which Seller is a party may be, without requiring the prior consent of the relevant counterparty assigned and delegated by Seller to Purchaser. Each such contract shall provide, upon notification to the counterparty from Purchaser, that: (a) the Agreement has been terminated; (b) Seller’s right to proceed with the Work has been terminated; and (c) Purchaser will thereafter be assuming Seller’s obligations under such contract, then such counterparty shall continue to perform its responsibilities under such contract for the benefit of Purchaser and shall recognize Purchaser as being vested with all the rights and responsibilities of Seller under such contract. Purchaser’s obligation to close a Default Transfer shall be subject to the same Purchaser’s Conditions applicable to Closing. Seller shall cooperate with Purchaser and take such steps as may be reasonably required to transfer the Project Assets to Purchaser within sixty (60) days after termination of this Agreement.

(d) Payment of Purchaser Default Termination Payment for Pre-Closing Termination. If this Agreement is validly terminated by Seller prior to Closing pursuant to Section 7.1.4 (Purchaser Material Breach), Section 7.1.6 (Firm Date) (other than if due solely to a Purchaser Non-Fault Event), or Section 7.1.8 (Purchaser Bankruptcy), then Purchaser shall (i) pay to Seller, to the extent not already paid, all Milestone Payments required to have been paid through the date of such termination, and, (ii) to the extent not covered by such Milestone Payments, Purchaser shall pay to Seller an amount equal to Seller’s documented third party costs in developing, installing, constructing, commissioning, testing and completing the Project through the date of termination, plus all of Seller’s documented third party costs, including but not limited to break fees and unwind and demobilization costs (provided that Seller shall reasonably coordinate with Purchaser to effectuate such unwind and demobilization), but if such amount in clause (b) is less than such Milestone Payments, Seller shall refund such excess to Purchaser, and

(iii) Purchaser shall pay a termination payment to Seller, as liquidated damages, in an amount equal to [ ] dollars (\$ ) per kW of the Planned Project Size (the “Purchaser Default Termination Payment”). Purchaser shall pay to Seller the Purchaser Default Termination Payment, if positive, promptly, and in any case not more than ten (10) Business Days after termination of this Agreement in accordance with the terms of this Article VII.

(e) Post-Closing Termination. If this Agreement is validly terminated after Closing, then the following shall apply:

(i) If such termination is pursuant to Section 7.1.3 (Seller Material Breach; Seller Material Adverse Effect Update), Section 7.1.9 (Seller Bankruptcy) or Section 7.1.12 (Performance Security Default), then Purchaser may pursue any rights and remedies available to it in under this Agreement or otherwise available at law or in equity.

(ii) If such termination is pursuant to Section 7.1.7 (Outside Substantial Completion Date), then Seller shall be obligated to pay Purchaser a termination payment in an amount equal to Purchaser’s post-termination costs in developing, installing, constructing, commissioning, testing and completing the Project.

(iii) If such termination is pursuant to Section 7.1.4 (Purchaser Material Breach), or Section 7.1.8 (Purchaser Bankruptcy), then Seller may pursue any rights and remedies available to it under this Agreement or otherwise available at law or in equity.

(iv) In no event will a termination of this Agreement that is subject to this Section 7.2.2(e) result in an unwinding of the Closing.

(f) Nature of Certain Termination Payments. The Parties acknowledge and agree that because of the unique nature of the Project and the unavailability of adequate substitutes, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Purchaser or Seller as a result of termination of this Agreement prior to Closing. It is understood and agreed by the Parties that: (i) Purchaser and Seller will be disadvantaged by such termination; (ii) it is impracticable or extremely difficult to quantify the amount of damages that would arise in the event of such a termination; (iii) the Seller Default Termination Payment and the Purchaser Default Termination Payment are in the nature of liquidated damages, are fair and reasonable and do not constitute penalties; and (iv) such payments represent a reasonable estimate of damages.

## **ARTICLE VIII INDEMNIFICATION**

### **8.1 Indemnification by Seller.**

Subject to the limitations set forth in this Agreement, including Section 8.4 (Limitations of Liability), Section 8.5 (Certain Limitations), Section 10.1 (Survival), Section 10.2 (No Other Representations), and Article XII (Limited Remedies and Damages), if the Closing occurs (except with respect to Section 8.1.6 below), Seller agrees to indemnify Purchaser and its Related Persons (each, a “Purchaser Indemnified Party”) for Losses incurred by any Purchaser Indemnified Party to the extent resulting from any of the following:

8.1.1 any breach or inaccuracy of a representation or warranty or other statement made by Seller in this Agreement or in any certification provided by Seller at Closing;

8.1.2 the breach by Seller of, or default in the performance by Seller of, any covenant, agreement, or obligation to be performed by Seller pursuant to this Agreement;

8.1.3 the Excluded Liabilities;

8.1.4 the Construction Costs;

8.1.5 any fraud, intentional misrepresentation, or willful misconduct by or gross negligence of Seller in connection with this Agreement or the transactions contemplated by this Agreement;

8.1.6 any Claims or Actions made by third parties (before, on, or after the Effective Date) against any Purchaser Indemnified Party arising from or as a result of the negligent acts or omissions of Seller or any of its Affiliates in connection with the development, design, construction, ownership, operation, or maintenance of the Project or the Project Assets; or

8.1.7 any (a) Seller Income Taxes or (b) Pre-Closing Taxes.

## **8.2 Indemnification by Purchaser.**

Subject to the limitations set forth in Section 8.4 (Limitations of Liability), Section 8.5 (Certain Limitations), Section 10.1 (Survival), Section 10.2 (No Other Representations), and Article XII (Limited Remedies and Damages), if the Closing occurs, Purchaser agrees to indemnify Seller and its Related Persons (each, a “Seller Indemnified Party”) from any and all Losses incurred by any Seller Indemnified Party to the extent resulting from any of the following:

8.2.1 any breach of a representation or warranty made by Purchaser in this Agreement;

8.2.2 the breach by Purchaser of, or default in the performance by Purchaser of, any covenant, agreement, or obligation to be performed by Purchaser pursuant to this Agreement;

8.2.3 the Assumed Liabilities;

8.2.4 any fraud, intentional misrepresentation, or willful misconduct by or gross negligence of Purchaser in connection with this Agreement or the transactions contemplated by this Agreement;

8.2.5 any Claims or Actions made by third parties (on or after the Closing Date) against any Seller Indemnified Party arising from or as a result of the acts or omissions of Purchaser or any of its Affiliates in connection with the ownership, operation, or maintenance of the Project or the Project Assets; or

8.2.6 any (a) Purchaser Taxes or (b) Post-Closing Taxes, in each case, other than Taxes that are allocated to or are otherwise the responsibility of Seller or its Affiliates under this Agreement.

### **8.3 Method of Asserting Claims.**

8.3.1 Claim Notice. In the event that (a) a Party seeking indemnification (the “Indemnified Party”) becomes aware of the existence of any Claim for which indemnification may be sought under Section 8.1 or Section 8.2 (an “Indemnification Claim”), or (b) any legal proceedings shall be instituted, or any Claim shall be asserted, by any Person not a Party to, and not affiliated with any Party to, this Agreement with respect to an Indemnification Claim (a “Third Party Claim”), the Indemnified Party shall promptly cause written notice thereof (a “Claim Notice”) to be delivered to the Party from whom indemnification is sought (the “Indemnifying Party”); provided that, so long as such notice is given within the applicable time period described in Section 10.1, no delay on the part of the Indemnified Party in giving any such notice shall relieve the Indemnifying Party of any indemnification obligation hereunder unless (and then solely to the extent that) the Indemnifying Party is actually prejudiced by such delay. Each Claim Notice shall be in writing and (i) shall specify the basis for indemnification claimed by the Indemnified Party, including a reference to the provisions of this Agreement with respect to which such right of indemnification is claimed or arisen, (ii) if such Claim Notice is being given with respect to a Third Party Claim, shall describe in reasonable detail such Third Party Claim and shall be accompanied by copies of all relevant pleadings, demands, and other papers served on the Indemnified Party, and (iii) shall specify the amount of (or if not finally determined, a good faith estimate of) the Losses being incurred by, or imposed upon, the Indemnified Party on account of the Indemnification Claim.

8.3.2 Third Party Claim Defense; Settlement. With respect to Third Party Claims, the Indemnifying Party shall have the right, at its sole option and expense, to be represented by counsel of its choice and to defend against, negotiate, settle, or otherwise handle any Indemnification Claim in accordance with this Agreement and if the Indemnifying Party elects to defend against, negotiate, settle, or otherwise handle any Indemnification Claim, it shall within thirty (30) days after receipt of the Claim Notice (or sooner, if the nature of the Indemnification Claim so requires) (the “Dispute Period”) notify the Indemnified Party of its intent to do so. If the Indemnifying Party does not elect within the Dispute Period to defend against, negotiate, settle, or otherwise handle any Indemnification Claim, the Indemnified Party may defend against, negotiate, settle, or otherwise handle such Indemnification Claim in accordance with this Agreement. If the Indemnifying Party elects to defend against, negotiate, settle with, or otherwise handle any Indemnification Claim, the Indemnified Party may participate, at its own expense, in the defense of such Indemnification Claim; provided, however, that such Indemnified Party shall be entitled to participate in any such defense with separate counsel reasonably acceptable to the Indemnifying Party, at the reasonable expense of the Indemnifying Party if (a) so requested by the Indemnifying Party to participate or, (b) in the reasonable opinion of counsel to the Indemnified Party, a conflict exists between the Indemnified Party and the counsel selected by the Indemnifying Party (so long as the Indemnified Party gives prompt written notice of such conflict to the Indemnifying Party and the opportunity to cure any such conflict); and provided, further, that the Indemnifying Party shall not be required to pay for more than one such counsel for all Indemnified Parties in connection with any Indemnification Claim. Seller, on the one hand, and Purchaser, on the other

hand, agree to cooperate with each other in connection with the defense, negotiation, or settlement of any such Indemnification Claim, including providing information reasonably available to such Party and any assistance reasonably requested in order to ensure the proper and adequate defense of any such claim. Notwithstanding anything in this Section 8.3.2 to the contrary, the Indemnifying Party shall not, without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned, or delayed), settle or compromise any Indemnification Claim or permit a default or consent to entry of any judgment (each a “Settlement”) unless (i) the claimant and such Indemnifying Party provide to such Indemnified Party an unqualified release from the Indemnification Claim, including all Liability associated therewith, (ii) such Settlement does not contain any admission of fraud or wrongdoing on behalf of the Indemnified Party, and (iii) such Settlement does not impose any obligation on the Indemnified Party, other than financial obligations for which the Indemnified Party will be fully indemnified hereunder.

8.3.3 Indemnity Payment. After any final decision, judgment, or award shall have been rendered by a Governmental Authority of competent jurisdiction and the expiration of the time in which to appeal therefrom (if the Indemnifying Party is pursuing an appeal), or a Settlement or arbitration shall have been consummated, or the Indemnified Party and the Indemnifying Party shall have arrived at a mutually binding agreement with respect to an Indemnification Claim hereunder, the Indemnified Party shall forward to the Indemnifying Party notice of any sums due and owing by the Indemnifying Party pursuant to this Agreement with respect to such Indemnification Claim and the Indemnifying Party shall make prompt payment thereof pursuant to the terms hereof.

## **8.4 Limitations of Liability.**

8.4.1 Claim Threshold. Notwithstanding anything to the contrary contained in this Agreement, (a) Seller shall not have liability for its indemnification obligations under Section 8.1.1 or Section 8.1.2 until the aggregate amount of all Losses incurred by the Purchaser Indemnified Parties that are subject to indemnification pursuant to Section 8.1.1 or Section 8.1.2 equals or exceeds [Amount] ([\$XXX]) (the “Claim Threshold”), in which event Seller shall become liable for the aggregate Losses under Section 8.1.1 or Section 8.1.2; it being understood and agreed that the Claim Threshold shall not apply to (i) claims based on fraud or willful misconduct, (ii) Third Party Claims, or (iii) claims for indemnification for breach of the Fundamental Seller Representations or the representations and warranties provided in Section 3.22 (Taxes), in each case for which Seller shall become liable for all such Losses, whether or not the Claim Threshold has been reached; and (b) Purchaser shall have no liability for its indemnification obligations under Section 8.2.1 or Section 8.2.2 until the aggregate amount of all Losses incurred by the Seller Indemnified Parties that are subject to indemnification pursuant to Section 8.2.1 or Section 8.2.2 equals or exceeds the Claim Threshold, in which event Purchaser shall become liable for the aggregate Losses under Section 8.2.1 or Section 8.2.2; it being understood and agreed that the foregoing Claim Threshold shall not apply to (A) claims based on fraud or willful misconduct, (B) Third Party Claims, (C) claims for indemnification for breach of the Fundamental Purchaser Representations, or (D) claims for indemnification for breach of Purchaser’s obligation to pay any portion of the Purchase Price due after the Closing Date, in each case for which Purchaser shall become liable for all such Losses, whether or not the Claim Threshold has been reached.

8.4.2 De minimis Claims. Seller shall have no liability pursuant to Section 8.1.1 in connection with any individual or group of claims that results in Losses to the Purchaser Indemnified Parties that are subject to indemnification pursuant to Section 8.1.1 in the aggregate of less than Amount ([ $\$XXX$ ]), and such Losses below such amount shall not be applied towards the satisfaction of the Claim Threshold. Purchaser shall have no liability pursuant to Section 8.2.1 in connection with any individual or group of claims that results in Losses to the Seller Indemnified Parties that are subject to indemnification pursuant to Section 8.2.1 in the aggregate of less than [Amount] Dollars ([ $\$XXX$ ]), and such Losses below such amount shall not be applied towards the satisfaction of the Claim Threshold.

8.4.3 Duplication of Claims. If any fact, circumstance, or condition forming a basis for a Claim for indemnification under Section 8.1 or Section 8.2, as applicable, shall overlap with any fact, circumstance, condition, agreement, or event forming the basis of any other Claim for indemnification under such section, there shall be no duplication in the calculation of the amount of the Losses.

#### 8.4.4 Anti-Sandbagging.

(a) A Purchaser Indemnified Party's right to indemnification pursuant to Section 8.1.1 with respect to a breach of a representation or warranty made by Seller in this Agreement will be deemed to have been waived solely to the extent that Seller can reasonably demonstrate that Purchaser had "actual knowledge" of such breach prior to the Closing. For purposes of demonstrating "actual knowledge" in accordance with the preceding sentence, Purchaser shall be deemed to have "actual knowledge" of a breach only if such breach is reasonably apparent without due inquiry or investigation to the Persons listed on Schedule 8.4.4(a) from the materials (i) contained within the data room established by Purchaser and Seller with respect to the transactions contemplated by this Agreement or (ii) provided in writing to Purchaser after the Execution Date and prior to the Closing Date.

(b) A Seller Indemnified Party's right to indemnification pursuant to Section 8.2.1 with respect to a breach of a representation or warranty made by Purchaser in this Agreement will be deemed to have been waived solely to the extent that Purchaser can reasonably demonstrate that Seller had "actual knowledge" of such breach prior to the Closing. For purposes of demonstrating "actual knowledge" in accordance with the preceding sentence, Seller shall be deemed to have "actual knowledge" of a breach only if such breach is reasonably apparent without due inquiry or investigation to the Persons listed on Schedule 8.4.4(b) from the materials (i) contained within the data room established by Purchaser and Seller with respect to the transactions contemplated by this Agreement or (ii) provided in writing to Seller after the Execution Date and prior to the Closing Date.

### 8.5 Certain Limitations.

An Indemnifying Party shall not be required to indemnify an Indemnified Party to the extent of any Losses that a court of competent jurisdiction shall have determined by final, non-appellable, judgment to have resulted from the fraud or willful misconduct of the Indemnified Party.

## **8.6 Determination of Losses.**

For purposes of this Article VIII, the amount of Losses arising out of any inaccuracy in or breach of any representations or warranties of Seller or Purchaser in Article III or Article IV shall be calculated as if the terms “material”, “Seller Material Adverse Effect”, and “Purchaser Material Adverse Effect” (and variations thereof) were omitted from such representations and warranties; provided that, and for the avoidance of doubt, such qualifiers shall be taken into account initially in determining whether a breach of any representations and warranties of Seller or Purchaser has occurred.

## **8.7 Mitigation.**

8.7.1 Each Indemnified Party shall use its Commercially Reasonable Efforts to mitigate Losses for which indemnification may be sought pursuant to Section 8.1 or Section 8.2, as applicable.

8.7.2 The amount which an Indemnifying Party is or may be required to pay to an Indemnified Party with respect to Losses for which indemnification is provided under this Agreement shall be reduced by any amounts actually received (including amounts actually received under insurance policies, less any deductibles) by or on behalf of any Indemnified Party or its Affiliates from third parties (such amounts are collectively referred to herein as “Indemnity Reduction Amounts”). If an Indemnified Party receives any Indemnity Reduction Amounts with respect to a Claim for which indemnification is provided under this Agreement after the full amount of such Claim has been paid by an Indemnifying Party or after an Indemnifying Party has made a partial payment of such Claim and such Indemnity Reduction Amounts exceed the remaining unpaid balance of such Claim, then the Indemnified Party shall promptly remit to the Indemnifying Party an amount equal to the excess (if any) of (a) the amount theretofore paid by the Indemnifying Party with respect to such Claim, less (b) the amount of the indemnity payment that would have been due if such Indemnity Reduction Amounts in respect thereof had been received before the indemnity payment was made. An insurer or other third party who would otherwise be obligated to pay any Claim will not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto, it being expressly understood and agreed that no insurer or any other third party shall be entitled to any benefit they would not be entitled to receive in the absence of the indemnification provisions by virtue of the indemnification provisions hereof.

8.7.3 Tax Benefits. Unless otherwise expressly provided in this Agreement, in determining the amount of any Loss with respect to which an amount may be payable to an Indemnified Party pursuant to this Article VIII, there shall be taken into account the amount of any income Tax benefit, if any, realized as a result of such Loss.

## **ARTICLE IX TAX MATTERS**

### **9.1 Cooperation.**

After the Closing Date, Seller and Purchaser shall use Commercially Reasonable Efforts (and shall cause their respective Affiliates to use Commercially Reasonable Efforts) to: (a) assist



the other Party in preparing any Tax Returns which such other Party is responsible for preparing and filing in accordance with the terms of this Agreement, (b) cooperate fully in preparing for any audits of, or disputes with any Taxing Authority regarding, any Tax Returns of Seller or Purchaser with respect to the Project or the Project Assets, and (c) deliver to each other as reasonably requested all information, records, or documents relating to Liability or potential Liability for Pre-Closing Taxes and Overlap Period Taxes and will preserve such information, records, or documents until thirty (30) days after the expiration of the applicable statute of limitations (including extensions or waivers thereof) with respect to the particular Tax to which the information, records, or documents relate.

## **9.2 Tax Covenants.**

9.2.1 Seller shall ensure that any Laborers and Mechanics Employed that perform any portion of the work under a Project Contract that constitutes Construction, Alteration, or Repair of the Project during the Prevailing Wage Term are paid wages at rates not less than the prevailing rates for work of a similar character in the locality where such Construction, Alteration, or Repair is performed, as most recently determined (applying the relevant timing rules in Treasury Regulation Section 1.45-7(b)(5), as may be amended, restated, or clarified) by the Secretary of Labor at the time of the relevant work or services, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

9.2.2 Except as provided in this Section 9.2.2, Seller shall ensure that, during the period commencing on the Effective Date and ending on the date the Project is Placed in Service by Purchaser, not less than fifteen percent (15%) of the total Labor Hours incurred in connection with any portion of the work under a Project Contract that constitutes Construction, Alteration, or Repair with respect to the Project is performed by Qualified Apprentices. Seller shall Employ, and shall ensure that EPC Contractor and any of its Subcontractors and any Contractor under a Project Contract that Employs four or more individuals performing Labor Hours in connection with such Construction, Alteration, or Repair Employs, one or more Qualified Apprentices. Seller shall, and shall cause EPC Contractor and its Subcontractors and any Contractor performing work under a Project Contract to retain books and records sufficient to demonstrate compliance with the foregoing. In the event that Seller, EPC Contractor or any of its Subcontractors, or a Contractor performing work under a Project Contract is not able to deliver such written documentation and is relying on the Good Faith Effort Exception, Seller, EPC Contractor, such Subcontractor, or such Contractor shall be deemed to have satisfied the responsibility set forth in this Section 9.2.2 to the extent that Seller, EPC Contractor, such Subcontractor, or such Contractor Makes Available to Purchaser supporting documentation establishing entitlement to such Good Faith Effort Exception, which shall include documentation demonstrating (i) that Seller or any such Tax Subcontractor requested Qualified Apprentices from a Registered Apprenticeship Program, and (ii) either (I) such request was denied for reasons other than the failure of Seller or such Tax Subcontractor to comply with the established standards and requirements of such Registered Apprenticeship Program, or (II) such Registered Apprenticeship Program failed to respond to such request within five (5) Business Days.

9.2.3 Seller acknowledges that the requirements of Section 9.2.1 and Section 9.2.2 are based on applicable Law as of the date of this Agreement and are essential to the

qualification of the Project for the Investment Tax Credit. If new or different requirements are promulgated under PWA Guidance, they will be governed by Section 5.15.

9.2.4 Seller shall, and shall cause EPC Contractor and each of its Subcontractors and any Contractor performing work under a Project Contract to maintain and preserve for the Prevailing Wage Term books and records for work or services performed sufficient to demonstrate compliance with Seller's responsibilities set forth in Sections 9.2.1 and 9.2.2, and that such books and records shall be maintained in accordance with the general recordkeeping requirements under Code Section 6001 and Treasury Regulation Section 1.6001-1 et seq. Seller shall require that the EPC Contractor or any of its Subcontractors or any Contractor performing work under a Project Contract to provide supporting documentation to support the requirements of Section 9.2.1 and Section 9.2.2 on no less than a monthly basis. Seller shall make, or shall cause to make, all such books and records available to Purchaser at the same time, or within a reasonable time thereafter not to exceed [X] days, that such documentation is available to Seller. Notwithstanding anything to the contrary, Seller shall retain through Prevailing Wage Term, (A) books and records for work sufficient to demonstrate compliance by Seller, EPC Contractor and any of its Subcontractors, and any Contractor performing work under a Project Contract with the representations set forth in Sections 9.2.1 and 9.2.2, (B) a copy of all contracts by and between EPC Contractor and any Subcontractor and any Contractor performing work under a Project Contract, (C) any documentation provided to Seller by EPC Contractor or its Subcontractors or a Contractor performing work under a Project Contract for the purpose of demonstrating compliance by EPC Contractor or such Subcontractor or such Contractor with the responsibilities set forth in Sections 9.2.1 and 9.2.2, and (D) any additional books and records necessary to meet the requirements of Code Section 6001 and Treasury Regulation Section 1.6001-1 et seq for the purpose of demonstrating compliance by Seller, EPC Contractor and any of its Subcontractors, and any Contractor performing work under a Project Contract with the representations set forth in Sections 9.2.1 and 9.2.2.

9.2.5 Seller shall use Commercially Reasonable Efforts to cooperate with Purchaser in the provision or filing with the Internal Revenue Service of information, registration or other requirements associated with the satisfaction of the Prevailing Wage and Apprenticeship Requirements, and Code Section 6417 or Code Section 6418.

9.2.6 No later than the last day of each calendar quarter following the issuance of notice to proceed under the EPC Agreement or under any other Project Contract, Seller shall deliver written documentation demonstrating compliance with Section 9.2.1 and Section 9.2.2.

9.2.7 Seller shall use Commercially Reasonable Efforts to cooperate with Purchaser's reasonable requests for information and documentation concerning compliance by Seller, EPC Contractor and its Subcontractors, and any Contract performing work under a Project Contract with the Prevailing Wage and Apprenticeship Requirements, which cooperation shall extend to reasonable attempts to obtain such cooperation from any Subcontractors.

9.2.8 Seller shall provide commercially reasonable support and cooperate with Purchaser in connection with any tax proceeding regarding the Project's compliance with Code Sections 45, 45Y, 48, and 48E, as applicable (each, a "Tax Contest"). In connection with any such tax proceeding concerning the Prevailing Wage and Apprenticeship Requirements, Purchaser shall

timely notify Seller of such audit or examination. Purchaser's failure to timely notify Seller of Tax Contest or any proceeding with respect to such Tax Contest shall not relieve Seller of its obligations hereunder. Purchaser shall keep Seller reasonably informed of the proceedings of any Tax Contest, shall deliver to Seller with any written submissions in connection therewith that are relevant to matters for which Seller may have an indemnification obligation under this Agreement and consider in good faith comments that Seller provides prior to the due date for any such submission prior to submission, and (provided that Seller has acknowledged in writing its obligation to indemnify Purchaser) shall not agree to a settlement of such Tax Contest without Seller's written consent, not to be unreasonably withheld, conditioned, or delayed.

9.2.9 This Section 9.2 shall survive the expiration or earlier termination of this Agreement until the expiration of the applicable statute of limitations (giving the effect to any extensions or waivers thereof).

### **9.3 Tax Contests.**

Purchaser shall control, in its sole discretion, any Tax audit, litigation, or other proceeding with respect to any income Taxes of Purchaser with respect to the Project, unless such audit, litigation, or proceeding involves a Claim made or proposed by the Internal Revenue Service that, if successful, would result in a Loss for which Seller may be required to indemnify Purchaser pursuant to this Agreement, in which case, Seller shall, at its own expense, control the defense and settlement of the applicable proceeding, including the content of all communications with Tax authorities.

### **9.4 Adjustments to Purchase Price.**

The Parties hereby agree that any and all indemnity payments made pursuant to this Agreement shall, to the maximum extent permitted by applicable Laws, be treated for all Tax purposes as an adjustment to the Purchase Price.

## **ARTICLE X SURVIVAL PERIODS; NO OTHER REPRESENTATIONS**

### **10.1 Survival of Representations, Warranties, Covenants, and Agreements.**

All representations and warranties contained in this Agreement shall survive, until the day that is three (3) years after the Closing Date; provided, however, that: (a) the Fundamental Seller Representations and the Fundamental Purchaser Representations shall survive indefinitely after the Closing Date; (b) the representations and warranties contained in Section 3.15 (Environmental Matters) shall survive until the day that is sixty (60) months after the Closing Date; and (c) the representations and warranties in Section 3.22 (Taxes) shall survive until the expiration of the applicable statute of limitations (giving effect to any extensions or waivers thereof). The covenants and agreements contained in this Agreement shall survive, (i) with respect to those covenants which by their nature are required to be performed at or prior to the Closing (other than covenants set forth in Article IX with respect to Taxes or the covenants set forth in Section 5.6.5), until the day that is eighteen (18) months following the Closing Date and, (ii) with respect to those covenants which by their nature are required to be performed following the Closing Date (other than covenants set forth in Article IX with respect to Taxes or the covenants set forth in

Section 5.6.5), until one hundred eighty (180) days after the earlier of (x) the period explicitly set forth therein or (y) the last date on which the applicable covenant was required to be fully performed; provided, however, that the covenants and agreements contained in: (A) Article IX (Tax Matters) with respect to Taxes shall survive until the expiration of the statute of limitations applicable to such Taxes (giving effect to any extensions or waivers thereof); (B) Section 13.6 (Confidentiality) shall be governed solely by the terms therein; and (C) Section 5.6 (Purchaser's Inspection Right) shall survive until the day that is thirty-six (36) months after the Closing Date. The indemnity obligations set forth in Section 8.1.5, Section 8.1.6, Section 8.2.4, and Section 8.2.5 shall survive indefinitely after the Closing Date.

## **10.2 No Other Representations.**

10.2.1 Notwithstanding anything in this Agreement to the contrary, it is the explicit intent of each Party hereto, and the Parties hereby agree, that none of the Parties nor any of their Related Persons nor any of their Representatives has made or is making, and neither Party has relied upon, any representation or warranty whatsoever, express or implied, written or oral, including as to the condition, merchantability, value, quality, usage, suitability, or fitness for any particular purpose, apparent or latent defects of any type, or risk or other incidents of the business, the Project, the Project Site, the Project Assets, the Assumed Liabilities, or any part thereof, or with respect to the accuracy or completeness of any other information provided or otherwise furnished by either Party to the other Party, its Related Persons or its or their Representatives, except those express representations and warranties contained in Article III and Article IV, as applicable to a Party, and any other representations or warranties are expressly disclaimed. In particular, and without in any way limiting the foregoing, Seller makes no representation or warranty to Purchaser with respect to the prospects, any financial projections, or forecasts relating to the Project or the Project Assets, and any such representations or warranties are expressly disclaimed. Notwithstanding the foregoing, nothing in this Section 10.2.1 shall limit the express representations and warranties of Seller contained in Article III.

10.2.2 Except for those express representations and warranties contained in Article III, the Project Assets are being transferred "as is, where is, with all faults."

## **ARTICLE XI DISPUTE RESOLUTION**

### **11.1 Dispute Resolution.**

If any dispute or Claim arises under this Agreement which is not resolved in the ordinary course of business, the Party raising such dispute shall notify, in writing, the other Party of the dispute, which notification must include a written explanation of the dispute and the material details of the notifying Party's position as to the dispute. Upon issuance of such dispute notification, each Party shall nominate a senior executive (President or a Vice President) with authority to decide or resolve the matter in dispute and provide notice thereof to the other Party within five (5) Business Days of issuance of such dispute notification. Such senior executives shall meet within ten (10) Business Days of issuance of such dispute notification and in good faith attempt to resolve the dispute within ten (10) Business Days thereafter, and to produce written terms of settlement for the dispute (a "Settlement Agreement"). If the senior executives are unable

to resolve a dispute pursuant to this Section 11.1, and to produce a Settlement Agreement within thirty (30) days after the date of their first meeting, then any Party may exercise any right or remedy available under this Agreement or applicable Law.

#### **11.2 Governing Law.**

This Agreement and the rights and obligations of the Parties hereunder and the transactions contemplated hereby shall be governed by, enforced under, and interpreted in accordance with the Laws of the State of Oregon, without regard to principles of conflicts of law that would apply the Laws of another jurisdiction.

#### **11.3 Exclusive Jurisdiction.**

Each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Federal courts located in Multnomah County, Oregon (or if such Federal court refuses jurisdiction, the state courts located in Multnomah County, Oregon) with respect to any action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in any such court or that any such suit, action, or proceeding that is brought in any such court has been brought in an inconvenient forum. During the period a legal dispute that is filed in accordance with this Section 11.3 is pending before a court, all actions, suits, or proceedings with respect to such legal dispute or any other legal dispute, including any counterclaim, cross-claim, or interpleader, will be subject to the exclusive jurisdiction of such court. Each Party hereby waives the defense, and shall not assert as a defense in any legal dispute, that (a) such Party is not subject thereto, (b) such action, suit, or proceeding may not be brought or is not maintainable in such court, (c) such Party's property is exempt or immune from execution, (d) such action, suit, or proceeding is brought in an inconvenient forum, or (e) the venue of such action, suit, or proceeding is improper. A final judgment in any action, suit, or proceeding described in this Section 11.3 following the expiration of any period permitted for appeal and subject to any stay during appeal will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

#### **11.4 Waiver of Trial by Jury.**

To the fullest extent permitted by Law, each of the Parties waives any right it may have to a trial by jury with respect to litigation directly or indirectly arising out of, under, or in connection with this Agreement. Each Party further waives any right to consolidate any Claim or Action in which a jury trial has been waived with any other Claim or Action in which a jury trial cannot be or has not been waived. This provision is a material inducement for the Parties to enter into this Agreement, and will survive the Closing of this Agreement.

### **ARTICLE XII LIMITED REMEDIES AND DAMAGES**

#### **12.1 Exclusive Remedies.**

From and after Closing, and except with respect to injunctive or equitable relief available to the Parties hereunder, or with respect to Claims for fraud or willful misconduct with respect to a Party in connection with the transactions contemplated by this Agreement, the Parties acknowledge and agree that the indemnification provisions set forth in Article VIII and Section 5.6.5 are the sole and exclusive remedy for a Party with respect to the transactions contemplated by this Agreement, whether based on statute, in tort, common law, strict liability, contract, or otherwise, and all other remedies or damages at Law or in equity are hereby waived by each Party. For the avoidance of doubt, neither this Section 12.1 nor Article VIII (Indemnification) shall in any way impair or preclude a Party's right to terminate this Agreement pursuant to Article VII (Termination), or in any way impair or diminish any payments due and owing to Purchaser hereunder, thereunder, or with respect to Seller's Letter of Credit.

## **12.2 Limitation of Liability.**

Notwithstanding any provision of this Agreement to the contrary, no Party nor its Related Persons nor its or their Representatives will, under any circumstances, be liable for special, indirect, consequential, incidental, punitive, or exemplary damages, lost profits, or loss of revenue, diminution in value, or loss of business reputation or opportunity of any other Person or such Person's Related Persons or Representatives, whether based in statute, tort, common law, strict liability, contract, or otherwise ("Non-Reimbursable Damages"). The limitations herein imposed on remedies, the measure of damages, and the determination of Non-Reimbursable Damages shall be without regard to the cause or causes related thereto, including the negligence, gross negligence, strict liability, or other fault of any Party, its Related Persons, and its or their Representatives, and whether liability is based on contract, tort, statute, common law, strict liability, or otherwise; provided that, Non-Reimbursable Damages shall not include (a) Third Party Claims or (b) any payments or funds which any Party has expressly promised to pay or deliver to any other Party, including the Delay LDs, the Seller Default Termination Payment, and the Purchaser Default Termination Payment.

## **12.3 Liability Cap Amount.**

In no event will Seller's aggregate liability to Purchaser under this Agreement for the payment of Delay LDs exceed [Amount] percent ([XX%]) of the Purchase Price (the "Delay LD Cap"). In no event will Seller's aggregate liability to Purchaser under this Agreement, including under Article VIII, exceed [Amount] percent ([XX%]) of the Purchase Price (the "Liability Cap"), it being understood and agreed that the foregoing limitation shall not apply to (a) Seller's liability for claims based on fraud, intentional misrepresentation, gross negligence, or willful misconduct committed by Seller or its Related Persons, (b) Third Party Claims, or (c) claims for indemnification for breach of the Fundamental Seller Representations or the representations and warranties provided in Section 3.22 (Taxes); provided that any such excluded indemnifiable Losses shall not be deemed to count against or otherwise reduce such limitation on Seller's aggregate liability. In no event will Purchaser's aggregate liability to Seller under this Agreement, including under Article VIII, exceed the Liability Cap, it being understood and agreed that the

foregoing limitation shall not apply to (i) claims based on fraud, intentional misrepresentation, gross negligence, or willful misconduct committed by Purchaser or its Related Persons, (ii) Third Party Claims, (iii) claims for indemnification for breach of the Fundamental Purchaser Representations, or (iv) claims for breach of Purchaser's obligation to pay any portion of the Purchase Price due after the Closing Date, provided that any such excluded indemnifiable Losses shall not be deemed to count against or otherwise reduce such limitation on such Purchaser's aggregate liability.

#### **12.4 Representatives and Affiliates.**

Notwithstanding anything in this Agreement to the contrary, no Related Person nor Representative of Seller shall have any personal liability to Purchaser or any other Person as a result of this Agreement or the breach of any representation, warranty, obligation, covenant, or agreement of Seller in this Agreement, and no Related Person nor Representative of Purchaser shall have any personal liability to Seller or any other Person as a result of this Agreement or the breach of any representation, warranty, obligation, covenant, or agreement of Purchaser in this Agreement; provided, however, that nothing in this Section 12.4 shall limit the EPC Contractor's liability to Purchaser under the EPC Agreement after the Closing Date.

### **ARTICLE XIII MISCELLANEOUS**

#### **13.1 Notices.**

13.1.1 Notice Addresses. Unless this Agreement specifically requires otherwise, any notice, demand, or request provided for in this Agreement, or served, given, or made in connection with it, shall be in writing and shall be deemed properly served, given, or made if delivered in person by email (subject to the requirements in Section 13.1.2 with respect to Material Notifications), registered or certified mail, postage prepaid, or a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to a Party at its address specified below.

If to Purchaser, to:

With respect to any Material Notification (as defined below):

Portland General Electric Company  
121 SW Salmon St.  
1 WTC 1700  
Portland, Oregon 97204-9951  
Attention: Angelica Espinosa VP, General Counsel  
Telephone: 503-464-7731  
Email: lglrecp@pgn.com

with a copy to (which will not constitute notice):

Portland General Electric Company  
121 SW Salmon St.  
3WTCBR09  
Portland, Oregon 97204-9951  
Attention:  
Email:

Portland General Electric Company  
121 SW Salmon St.  
1 WTC 1700  
Portland, Oregon 97204-9951  
Attention:  
Telephone:  
Email:

With respect to all other communications under this Agreement:

Portland General Electric Company  
121 SW Salmon St.  
3WTCBR09  
Portland, Oregon 97204-9951  
Attention:  
Telephone:  
Email:

Portland General Electric Company  
121 SW Salmon St.  
3WTCBR09  
Portland, Oregon 97204-9951  
Attention:  
Email:

If to Seller:

With respect to any Material Notification (as defined below):

[Seller's Name]

Attention: General Counsel  
Telephone:  
Fax:  
Email:



with a copy to (which will not constitute notice):

[Seller's Name]  
Attention:  
Telephone:  
Fax: N/A  
Email:

With respect to Title Objection Letters only:

[Seller's Name]  
Attention:  
Telephone:  
Fax:  
Email: ]

With respect to all other communications under this Agreement:

[Seller's Name]  
Attention:  
Phone:  
Fax:  
Email:

13.1.2 Effective Time. Notice given by personal delivery, mail, or overnight courier pursuant to this Section 13.1.2 shall be effective upon physical receipt. Notice given by email pursuant to this Section 13.1.2 shall be effective as of (a) the date of confirmed delivery if delivered before 5:00 p.m. local prevailing time on any Business Day, or (b) the next succeeding Business Day if confirmed delivery is after 5:00 p.m. local prevailing time on any Business Day or during any non-Business Day; provided that, any email delivery must read at the beginning of the subject line thereto "[Seller Name] - BTA NOTICE"; provided further that, any Material Notification, will not be deemed delivered in accordance herewith, unless a complete copy thereof (with all attachments thereto) is actually received by the applicable Party by mail or courier on the next Business Day (and if such copy is not timely received, then such notice will be deemed to have been effective as of the date such copy was delivered and effective by mail or courier in accordance with this Section 13.1.2).

## **13.2 Payments.**

Except for payments due at Closing, including the Closing Payment, if a Party is required to make any payment under this Agreement on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

## **13.3 Entire Agreement.**

This Agreement and the Ancillary Agreements, including, in each case, all schedules and exhibits thereto, supersede all prior discussions and agreements between the Parties with respect

to the subject matter hereof and thereof, and contain the sole and entire agreement between the Parties hereto with respect to the subject matter hereof and thereof. In the event of a conflict between this Agreement and the Ancillary Agreements, the terms of this Agreement shall control. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

#### **13.4 Expenses.**

Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are completed, each Party will pay its own costs and expenses incurred in connection with the negotiation, execution, and performance under this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby.

#### **13.5 Public Announcements.**

Prior to Substantial Completion, the timing, manner, and content of all public announcements or other general public communications, including any filming at the Project Site, by either Party in relation to this Agreement and the purchase or sale of the Project Assets shall be fully discussed in advance between, and approved in writing by, Seller and Purchaser; provided that either Party may make any public disclosure it believes in good faith and upon advice of counsel is required by applicable Laws or regulation or stock exchange rules, without the consent of (but, if not prohibited by Law, with notice to) the other Party. After Substantial Completion, neither Party shall make any public announcements or general public communications in relation to this Agreement or the purchase and sale of the Project Assets without the other Party's prior written approval, which shall not be unreasonably withheld.

#### **13.6 Confidentiality.**

13.6.1 Confidential Information. "Confidential Information" means: (i) the terms and provisions of this Agreement; (ii) all confidential, proprietary, and trade secret information, ideas, and materials of or about a disclosing Party or its Affiliates, employees, contractors, or customers that is furnished after the Effective Date and labeled "confidential" or "proprietary" (or, if presented orally, is stated at the time to be confidential or is identified as being "confidential" or "proprietary" in a letter sent to the receiving Party no later than five (5) days after the disclosure); and (iii) information that a reasonable Party in receipt of such information would infer should be treated as confidential, proprietary, or trade secret information. If labeled or identified as such, Confidential Information includes: (a) information, ideas, or materials of a technical nature such as research and development results, designs and specifications, and other materials and concepts relating to the products and processes of the disclosing Party and its Affiliates, and (b) information, ideas, or materials of a business nature such as non-public financial information; information regarding costs, profits, products, marketing, customers, suppliers, employees, and salaries; marketing and sale plans and forecasts; business and financial plans and forecasts; and power project development plans and opportunities.

13.6.2 Exclusions. Notwithstanding the foregoing, Confidential Information shall not include information (a) that was publicly available at the time of the disclosure thereof by one Party to the other; (b) that becomes publicly available other than through actions of the receiving

Party or any of its Representatives in violation of this Agreement; (c) that was in the possession of the receiving Party (without confidential or proprietary restriction) at the time of disclosure or that becomes available to the receiving Party from a source not subject to any obligation to keep such information confidential; or (d) that was independently developed by a Party or Party's Representatives without the use or knowledge of any Confidential Information provided pursuant to this Agreement.

13.6.3 Restrictions on Use and Disclosure. Unless and until it receives the prior written consent of the disclosing Party, and except to the extent necessary under Section 13.6.4, the receiving Party agrees (a) to hold all Confidential Information of the disclosing Party in strict confidence; (b) not to publish or otherwise disclose to any person or entity any Confidential Information of the disclosing Party; and (c) not to use, copy, reproduce, photograph, or otherwise make any image of the Confidential Information of the disclosing Party for any purpose except in connection with the consideration of the Project. The Parties understand that these prohibitions on use or disclosure generally prevent each Party from discussing Confidential Information of the disclosing Party, even in general terms, with Persons other than its Representatives.

#### 13.6.4 Compelled Disclosure.

(a) If a receiving Party or its Representatives is requested or required to disclose Confidential Information provided under this Agreement by subpoena; or by other directive of a court, arbitration panel, or Governmental Authority; or as required by applicable Law, as the receiving Party shall determine, the receiving Party shall use Commercially Reasonable Efforts to avoid disclosure of such information, and prior to any disclosure, will provide the disclosing Party with prompt notice of such request or requirement in order to enable the disclosing Party to: (i) seek an appropriate protective order or other remedy at its own expense; (ii) consult with the receiving Party with respect to taking steps to resist or narrow the scope of such request or legal process; or (iii) waive compliance, in whole or in part, with the terms of this Section 13.6.

(b) In the event that such protective order or other remedy is not obtained, or that the disclosing Party waives compliance with the provisions hereof, the receiving Party agrees to furnish only that portion of information so provided under this Agreement which the receiving Party determines is legally required to be provided, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such information.

13.6.5 Permitted Disclosures. Notwithstanding the restrictions set forth in Section 13.6.3, each Party may disclose Confidential Information received by it to its Representatives, who need to know such Confidential Information for the purpose of such Party's evaluation of the Project; provided that the receiving Party informs each such Person who has access to the Confidential Information of its confidential nature, the terms of this Section 13.6, and that such terms apply to them. The Party receiving Confidential Information shall use reasonable efforts to ensure that each Representative complies with the terms of this Section 13.6, and that any Confidential Information received by such Representative is kept confidential. The receiving

Party hereby represents and warrants in favor of the disclosing Party that it maintains, and will maintain during the term of this Agreement, procedures that are reasonably designed to promote compliance with its confidentiality obligations hereunder. Notwithstanding anything to the contrary contained in this Agreement, Purchaser may disclose Confidential Information to the OPUC in connection with any request for proposals or regulatory proceeding; provided, however, Purchaser shall use Commercially Reasonable Efforts to seek and obtain a protective order from the OPUC in connection with such disclosure of Confidential Information, and, if, to Purchaser's actual knowledge, the OPUC plans to disclose any Confidential Information without the protection of a protective order, Purchaser shall give prompt notice to Seller of such possible disclosure and shall provide reasonable assistance to Seller in its efforts to oppose such disclosure.

**13.6.6 Confidentiality Term.** The rights and obligations set forth in this Section 13.6 shall terminate three (3) years after the date of this Agreement, unless the Party disclosing the Confidential Information specifically agrees in writing to release all or part of the Confidential Information from the confidential restrictions imposed by this Section 13.6 at an earlier date.

**13.6.7 Confidentiality Remedies.** Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Section 13.6 could cause the other Party or its Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall be entitled to seek injunctive relief to the extent allowed by Law to prevent breaches of this Section 13.6 and to specifically enforce the terms and provisions hereof. Nothing in this Agreement shall be construed as a representation that a Party will not develop or acquire information that is the same as or similar to Confidential Information provided by another Party; provided that the Party does not do so in breach of this Section 13.6.

### **13.7 Waivers.**

**13.7.1 Grant of Waivers.** Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

**13.7.2 Exercise of Remedies.** No failure or delay of any Party, in any one or more instances, (a) in exercising any power, right, or remedy (other than failure or unreasonable delay in giving notice of default) under this Agreement or (b) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations, or agreements under this Agreement, shall operate as a waiver, discharge, or invalidation thereof, nor shall any single or partial exercise of any such right, power, or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power, or remedy, or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power, or remedy. Subject to Section 10.1, the covenants, obligations, and agreements of a

defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act, or omission.

### **13.8 Amendment.**

This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by the Parties.

### **13.9 No Construction Against Drafting Party.**

The language used in this Agreement is the product of the Parties' efforts and each Party hereby irrevocably waives the benefits of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific words in a contract.

### **13.10 No Third Party Beneficiary.**

The terms and provisions of this Agreement are intended solely for the benefit of each Party hereto and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person; provided that, Seller Indemnified Parties and Purchaser Indemnified Parties shall be third-party beneficiaries of this Agreement solely with respect to their rights to seek indemnification pursuant to Article VIII.

### **13.11 Headings.**

The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

### **13.12 Invalid Provisions.**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future Law, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here from, and (d) Purchaser and Seller shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

### **13.13 Assignment.**

Neither this Agreement nor any of the rights or obligations hereunder shall be assigned by either Party, including by operation of Law, without the prior written consent of the other Party. A Change of Control of Seller will be deemed an assignment of this Agreement by Seller and shall require the prior written consent of Purchaser, provided that Seller shall be permitted to collaterally

assign this Agreement in connection with any financing by Seller or any of its Affiliates in accordance with the Purchaser's consent, which shall not be unreasonably withheld, and any other terms that are agreed upon in the form of consent. Any consent required from a Party under this Section 13.13 shall not be unreasonably withheld, conditioned or delayed by such Party. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void. If Seller or any of its Affiliates enters into any financing and collaterally assigns this Agreement in connection therewith, then (a) Seller or its Affiliates shall enter into a consent to collateral assignment, estoppel certificates or other documentation required in connection with such financing in a form reasonably acceptable to Purchaser, and (b) Seller or its Affiliate shall pay Purchaser for the reasonable third-party expenses incurred by Purchaser in providing such consents to collateral assignment, estoppel certificates and documentation.

#### **13.14 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile transmission, by email in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

#### **13.15 No Partnership or Joint Venture.**

The Parties do not intend to create a partnership or joint venture by virtue of this Agreement. Neither Party will owe any fiduciary duty to the other Party by virtue of this Agreement or any other document or Contract contemplated hereby.

#### **13.16 Schedules.**

Either Party may, at its option, include in its Schedules items that are not material in order to avoid any misunderstanding, and any such inclusion, or any references to dollar amounts, will not be deemed to be an acknowledgment or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information disclosed in any Schedule will constitute a disclosure for purposes of all other Schedules and each Section of this Agreement where such information is relevant notwithstanding the lack of specific cross-reference thereto, but only to the extent the applicability of such disclosure to such other Schedule is reasonably apparent on its face. In no event will the inclusion of any matter in the Schedules be construed as constituting a representation or warranty of a Party or be deemed or interpreted to broaden a Party's representations, warranties, covenants, or agreements contained in this Agreement. No reference to or disclosure of any item or other matter in the Schedules will be construed as an admission, indication, or evidence that such item or other matter is material, that such item is reasonably likely to result in a Purchaser Material Adverse Effect or Seller Material Adverse Effect, or that such item or other matter is required to be referred to or disclosed in the Schedules. No reference in the Schedules to any agreement or

document will be construed as an admission or indication that such agreement or document is enforceable or currently in effect or that there are any obligations remaining to be performed or any rights that may be exercised under such agreement or document, except to the extent that any such agreement or document is referred to by reference to the Schedules in an express representation or warranty to that effect set forth in the Agreement. No disclosure in the Schedules relating to any possible breach or violation of any Contract or Law will be construed as an admission or indication that any such breach or violation exists or has actually occurred. The headings and descriptions of the disclosures in the Schedules are for convenience of reference only and are not intended to and do not alter the meaning of any provision of this Agreement or of the Schedules. The information provided in the Schedules is solely for the use of the Parties in connection with the transactions contemplated by this Agreement and will be subject to the terms of this Agreement, and may not be used or relied upon by any other Person or for any other purpose.

*[Signature page follows.]*

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

**SELLER:**

**[SELLER'S NAME]**

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

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

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

**PURCHASER:**

**PORTLAND GENERAL ELECTRIC COMPANY,**  
an Oregon corporation

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

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

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



## **EXHIBIT A-1**

Form of Seller's Letter of Credit

## **EXHIBIT B**

### Form of Bill of Sale

## **EXHIBIT C-1**

### **Form of Assignment and Assumption Agreement**

## **EXHIBIT C-3**

### Form of Transmission Transfer Agreement

## **EXHIBIT D-1**

### Form of Purchaser Secretary Certificate

**EXHIBIT D-2**

Form of Seller Secretary Certificate

## **EXHIBIT D-3**

### **Form of Seller Incumbency Certificate**

## **EXHIBIT E**

### Form of EPC Agreement



## **EXHIBIT I**

### Form of Estoppels

## **EXHIBIT J-1**

### **Form of Purchaser Firm Date Certificate**

## **EXHIBIT J-2**

### **Form of Seller Firm Date Certificate**

## **EXHIBIT M**

### **Long-Term Service Agreement**

## **EXHIBIT N**

### **Payment Schedule**

## **EXHIBIT O**

### **Equipment Warranty and Performance Guarantees Agreement**

## **EXHIBIT P**

Title Exceptions Subject to Cure

## **EXHIBIT Q**

### **Form of Licensed Professional Engineer Engagement Agreement**



## **EXHIBIT S**

### **Form of Transmission Services Agreement**

**SCHEDULE 1.1(k)**

Purchaser's Knowledge

## **SCHEDULE 1.1(l)**

### Required Approvals

## **SCHEDULE 1.1(o)**

Seller's Knowledge

## **SCHEDULE 5.5.2(a)**

### **Permitted Contracts**

## **SCHEDULE 5.7**

### **Continuing Insurance Coverage**

## **SCHEDULE 5.10.4**

### **Reports Requiring Reliance Letters**

## **SCHEDULE 5.10.5**

### **Qualified Firms and Consultants**



## **SCHEDULE 5.12.2**

### **Purchaser Obligations**

**SCHEDULE 6.1.8(c)**

Closing Date Estoppel List

**SCHEDULE 8.4.4(a)**

Purchaser's "Actual Knowledge"

**SCHEDULE 8.4.4(b)**

Seller's Actual Knowledge

## **SCHEDULE 1.1(a)**

### **Excluded Assets**

## **SCHEDULE 1.1(b)**

### **Permits**

## **SCHEDULE 1.1(c)**

### **Firm Date Reports**

## **SCHEDULE 1.1(d)**

### **Firm Date Required Consents**



## **SCHEDULE 1.1(e)**

### **Permitted Liens**

## **SCHEDULE 1.1(f)**

### **Project Contracts**

## **SCHEDULE 1.1(g)**

### **Project Equipment**

## **SCHEDULE 1.1(h)**

### **Project Improvements**

## **SCHEDULE 1.1(i)**

### **Project Real Property Agreements**

## **SCHEDULE 1.1(j)**

Project Site

## **SCHEDULE 1.1(n)**

**Seller and Affiliates IP**

**SCHEDULE 1.1(q)**

**Seller's Qualifying Tax Opinion**



## **SCHEDULE 1.1(r)**

### **Firm Transmission Agreements**

## **SCHEDULE 3.4.2**

### **Seller's Consents**

## **SCHEDULE 3.5**

### **Seller's Governmental Approvals and Filings**

## **SCHEDULE 3.6**

### **Seller's Legal Proceedings**

## **SCHEDULE 3.7**

### **Compliance with Laws**

### **SCHEDULE 3.9.3**

#### **Project Real Property Agreement Defaults/Breaches**

## **SCHEDULE 3.9.6**

### **Real Property Actions**

## **SCHEDULE 3.10.1**

### **Sufficiency of Project Assets**



### **SCHEDULE 3.10.2**

Location of Project Equipment and Project Improvements Not at Project Site

### **SCHEDULE 3.12.3**

#### **EPC Agreement Defaults**

### **SCHEDULE 3.13.2(c)**

Firm Date Permit or Project Permit Actions

### **SCHEDULE 3.13.3**

#### **Pending Firm Date Permits**

### **SCHEDULE 3.13.4**

Pending Closing Date Project Permits

## **SCHEDULE 3.15.7**

Environmental or Historic Resources

## **SCHEDULE 3.18**

### Intellectual Property

## **SCHEDULE 3.19**

### **Final Reports**



## **SCHEDULE 4.4.2**

### **Purchaser's Consents**

## **SCHEDULE 4.5**

### **Purchaser's Governmental Approvals and Filings**

## **SCHEDULE 4.6**

### **Purchaser's Legal Proceedings**



**PGE Corporate Headquarters**

121 S.W. Salmon Street | Portland, Oregon 97204

[portlandgeneral.com](http://portlandgeneral.com)