

THIS IS A WORKING DRAFT PURCHASE AGREEMENT FOR THE SALE AND PURCHASE OF THE OUTPUT OF A NEW [TYPE OF GENERATION] GENERATING FACILITY. THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE POWER PURCHASE AGREEMENT IS SIGNED BY BOTH PARTIES, NEITHER PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF ANY NEGOTIATIONS. PURSUANT TO THE REQUEST FOR PROPOSAL TO WHICH THIS WORKING DRAFT IS ATTACHED, "PURCHASER" WILL CONSIDER PRICING STRUCTURES THAT ARE DIFFERENT FROM THE STRUCTURE CONTAINED IN THIS WORKING DRAFT, IF PROPOSED.

**[INSERT NAME OF PROJECT] PROJECT
POWER PURCHASE AGREEMENT**

MADE

BETWEEN

[SELLER's NAME],

AS SELLER

AND

PUGET SOUND ENERGY, INC.

AS PURCHASER

DATED AS OF _____, _____

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POWER PURCHASE AGREEMENT

This Power Purchase Agreement ("**Agreement**"), dated as of this ___ day of _____, _____, is between [SELLER's NAME] a Washington [corporation][limited liability company] ("**Seller**"), and Puget Sound Energy, Inc., a Washington corporation ("**Purchaser**"). Both of Seller and Purchaser are sometimes referred to in this Agreement together as the "**Parties**"; each of Seller and Purchaser is sometimes referred to in this Agreement as "**Party**."

RECITALS

WHEREAS, Seller intends to site, develop, finance, construct, own and operate a [type of generation] electrical generation facility (as defined herein and more particularly described in **Exhibit A-1** to this Agreement, the "**Project**") on sites located in [_____] (as more particularly described in **Exhibit A-2** to this Agreement, the "**Site**"); and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the entire output of Energy from the Project [and all of the Environmental Attributes related to the generation of Energy from the Project].

NOW THEREFORE, in consideration of the mutual covenants contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Unless otherwise required by the context in which any term appears, (a) capitalized terms used in this Agreement have the meanings specified in this Article 1; (b) the singular shall include the plural and vice-versa; (c) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices," or "Exhibits" (if any) shall be to articles, sections, schedules, annexes, appendices, or exhibits hereof; (d) all references to a particular entity shall include a reference to such entity's successors and permitted assigns; (e) the words "herein," "hereof," and "hereunder" shall refer to this Agreement as a whole and not to any particular article or section hereof; (f) the word "including" shall mean "including, without limitation," and the word "include" shall mean "include, without limitation," (g) all accounting terms not specifically defined herein shall be construed in accordance with GAAP; and (h) references to this Agreement shall be a reference to this Agreement and all appendices, annexes, schedules, and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Actual Operational Hours" means, for each Generator during any Contract Year, the period (expressed in hours or portions of an hour) in such Contract Year in which such Generator actually produces power, less the sum of:

(a) any period (expressed in hours or portions of an hour) during such Contract Year in which, by reason of a System Emergency, Purchaser is unable to accept delivery of any Energy that such Generator is otherwise capable of generating; and

(b) any period (expressed in hours or portions of an hour) during such Contract Year in which such Generator is not operational as a result of a Force Majeure Event;

it being understood and agreed that for any given Contract Year for which Actual Operational Hours are calculated, the deductions from Actual Operational Hours for such period pursuant to (a) and (b) above shall be the same as the deductions from Base Hours for such period pursuant to clauses (a) and (c) of the definition of "Base Hours."

"Additional Security" means any of the following, to be provided by Seller pursuant to Section 7.4.2:

(a) a Letter of Credit in the required amount; or

(b) cash (immediately available funds) in the required amount, which cash must be delivered to a Custodian to be held thereby as security for the Party entitled to the benefits thereof pursuant to an escrow agreement satisfactory in form and substance to the Party for whose benefit such cash is being provided, which escrow agreement shall include the provisions of Section 7.4.3; or

(c) a guaranty in the required amount, for the required term, and from a Qualified Guarantor, of:

(i) Seller's obligations under this Agreement; or

(ii) Seller Guarantor's obligations under the guaranty agreement executed and delivered by Seller Guarantor hereunder;

in either case on substantially the same terms and conditions set forth in the form of Seller Guaranty Agreement attached hereto as **Exhibit G**.

"Affiliate" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of

the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Applicable Law" means, with respect to any Person, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and permits, directives, and requirements of all regulatory and other governmental authorities, in each case applicable to or binding upon such Person and, in the case of Seller, the Project.

"Average Annual Output" means the average Energy output of the Project per year as measured for any Contract Year.

"Balance of Plant" means all equipment and materials and other items incorporated (or to be incorporated) in the Project, except for the Generator. Balance of Plant includes, but is not limited to, the civil, electrical and mechanical construction works (principally site preparation, foundations for transformers and Generator and cable and pipe ducting, the control works) and the Interconnection Facilities, the Seller's Meters and associated foundation, including the pad-mount transformers and the pad-mount switchgear, the communications system and the communication system cables and the electrical works (principally cables and equipment).

"Base Hours" means, for each Generator during any Contract Year, the period (expressed in hours or portions of an hour) in such Contract Year, less the sum of:

(a) any period (expressed in hours or portions of an hour) during such Contract Year in which, by reason of a System Emergency, Purchaser is unable to accept delivery of any Energy that such Generator is otherwise capable of generating;

(b) any period (expressed in hours or portions of an hour) during such Contract Year in which such Generator is not operational as a result of Scheduled Maintenance; provided, that the number of hours (or portions of an hour) that may be subtracted pursuant to this clause (b) for all Generators for a given one-year period shall not exceed a cumulative maximum equal to the product of twenty-four (24) multiplied by the number of Generator; and

(c) any hours during such Contract Year in which such Generator is not operational as a result of a Force Majeure Event.

"Business Day" means each Day that is not a weekend Day or a federal holiday Day.

[**"CAMD"** means the Clean Air Markets Division of the Environmental Protection Agency or any successor agency that is given jurisdiction over a program involving transferability of Environmental Attributes.]

"Commercial Operation Date" means the date on which all of the Generator in the Project having one hundred percent (100%) of the Required Installed Capacity, and all other

portions of the Project necessary to put the Project into operation with the Interconnection Facilities and the Transmission System, have been tested and commissioned and are both authorized under Applicable Law and able to operate and deliver Energy to the Transmission System in accordance with Prudent Utility Practices and all Permits therefor have been obtained.

"Consolidated Net Tangible Assets" means, as of the date of any determination thereof, the total amount of all assets of a Person determined on a consolidated basis in accordance with GAAP as of such date, less the sum of:

- (a) the consolidated current liabilities of such Person determined in accordance with GAAP; and
- (b) assets properly classified as intangible assets in accordance with GAAP.

For all purposes of this Agreement, the Consolidated Net Tangible Assets of a Person shall be as shown on such Person's most recent regularly prepared quarterly financial statements (if determination thereof is made during the second, third or fourth quarters of such Person's fiscal year) or audited annual financial statements (if determination thereof is made during the first quarter of such Person's fiscal year).

"Construction Permits" means all those Permits that are required to be obtained by Seller as a condition to Seller's right to construct the Project, as described in **Exhibit D**.

"Contract Capacity Rate" means the rate, expressed in dollars per MW, payable by Purchaser for capacity of the Project during the Initial Term hereof. The Contract Capacity Rate for each Contract Year during the Stub Period and the Initial Term is set forth in **Exhibit E** hereto under the column designated "Contract Capacity Rate (\$ per MW)."

"Contract Energy Rate" means the rate, expressed in dollars per MWh, payable by Purchaser for Energy (other than Test Power and Excess Output) [and Environmental Attributes] generated by the Project during the Initial Term hereof. The Contract Energy Rate for the Stub Period and each Contract Year during the Initial Term is set forth in **Exhibit E** hereto under the column designated "Contract Energy Rate (\$ per MWh)."

"Contract Rate" means, collectively, the Contract Capacity Rate, as applicable, and the Contract Energy Rate for Energy, Test Power and Excess Output.

"Contract Year" means the Days from January 1 through December 31, inclusive, of any given year. The first Contract Year shall commence on the first January 1 occurring after the Commercial Operation Date.

"Cost to Cover" means, with respect to any Energy from the Project that Seller was obligated to deliver, but did not deliver, under this Agreement, an amount equal to all costs and losses incurred by Purchaser (or that would be incurred by Purchaser) to replace

undelivered Energy (including costs of energy and associated capacity), as a result of such non-delivery, reduced by the amount of payments that Purchaser would have made to Seller if such Energy had been delivered; provided, that the Cost to Cover with respect to any period shall not be less than zero dollars.

"Custodian" means a commercial bank or trust Seller organized under the laws of the United States of America or a political subdivision thereof, whose long-term senior unsecured debt is rated at least "A" by S&P or "A2" by Moody's.

"Day" means a period of 24 consecutive hours beginning at 00:00 hours Pacific time on any calendar day and ending at 24:00 hours Pacific time on the same calendar day.

"Default Notice Parties" means, in the case of an Event of Default by Seller, Seller, Seller Guarantor and Seller Lender (if any), and in the case of an Event of Default by Purchaser, Purchaser only.

"Defaulting Party" has the meaning set forth in Section 12.1.1.

"Delay Payment" has the meaning set forth in Section 6.3.2.

"Delivery Point" means the location on Purchaser's electric system shown in **Exhibit C** at which all Energy (including Test Power) is to be delivered by Seller to Purchaser hereunder.

"Due Date" has the meaning set forth in Section 5.1.1.

"Due Diligence Report" means one or more reports from consultants or other independent experts chosen by Purchaser, and reasonably acceptable to Seller, that conclude, following an analysis of the Project and plans for the Project, that:

(a) the Project has been or will be designed and constructed consistent with Prudent Utility Practices and Applicable Law;

(b) plans for Project maintenance have been established and such plans are consistent with Prudent Utility Practices;

(c) the operation of the Project after the Commercial Operation Date will comply with all Applicable Law;

(d) the Project is financially feasible and can reasonably be expected to afford Seller an adequate rate of return;

(e) the Project can reasonably be expected to be available so as to comply with Seller's obligations hereunder; and

(f) the Commercial Operation Date can reasonably be expected to occur on or before ____ Days following the execution of this Agreement.

"Earnings-to-Interest Ratio" means the ratio equal to Seller Guarantor's earnings before interest and taxes over Seller's interest expenses.

"Effective Date" has the meaning set forth in Section 2.1.

"Energy" means any and all electrical energy generated by the Project, minus station load and transmission losses up to the Delivery Point, as measured in MWh at the Delivery Point.

"Environmental Attributes" means (a) credits, benefits, reductions, offsets and other beneficial allowances, howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of [type of generation] generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the Project during the Term and in which Seller has property rights or will have property rights upon such attributes coming into existence (with Seller taking only such action as required by the last sentence of Section 3.2.1), and include any of the same arising out of legislation or regulation (i) concerned with (A) oxides of nitrogen, sulfur, or carbon, (B) particulate matter, soot, or mercury, or (C) implementing the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or crediting "early action" with a view thereto, or (ii) involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or its successor (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the "CAMD"), and (b) all Environmental Attribute Reporting Rights, but specifically excluding from "Environmental Attributes" only the PTCs.]

"Environmental Attribute Reporting Rights" means all rights to report ownership of the Environmental Attributes to any person or entity, under Section 1605(b) of the Energy Policy Act of 1992 or otherwise.]

"Event of Default" has the meaning set forth in Section 12.1.1.

"Excess Output" has the meaning set forth in Section 3.3.3.

"Excess Output Credit Rate" means, for each Contract Year, [____]% of the Contract Rate or Renewal Rate, as applicable, for such Contract Year.

"Excess Output Credit" has the meaning set forth in Section 5.1.2.

"Federal Power Act" means the Federal Power Act, as heretofore or hereafter amended, 16 U.S.C. § 791a, *et seq.*

"FERC" means the Federal Energy Regulatory Commission or its successor.

"Force Majeure Event" means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement, to the extent such act or event is reasonably unforeseeable and beyond the reasonable control of such Party or its Affiliates and cannot have been avoided or overcome by such Party or its Affiliates through the exercise of reasonable diligence (such act or event may include any act of God or the elements, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, transmission curtailment or outage, an act of public enemy, terrorism, war, blockade, civil insurrection, riot, civil disturbance or strike or labor disruption); provided, that neither of the following shall be a Force Majeure Event: (a) Seller's failure to obtain any of the Permits; or (b) the inability of such Party or any third party to obtain needed funds.

"GAAP" means generally accepted accounting principles in the United States of America, consistently applied.

"Generator" means each of the generating systems described in **Exhibit B** hereto.

"Generator Completion" means, with respect to any Generator, the completion of the construction, installation, commissioning and testing of such Generator and all other equipment and facilities necessary to connect such Generator with the Interconnection Facilities and the Transmission System and otherwise put such Generator into commercial operation for the generation and delivery of Energy in accordance with Prudent Utility Practices and for the delivery to Purchaser of a Generator Final Completion Certificate related thereto.

"Generator Final Completion" means the achievement of Generator Completion for all Generators.

"Generator Final Completion Certificate" means a duly completed and executed certificate, substantially in the form of **Exhibit H** hereto.

"Generator Final Completion Date" means the date of Generator Final Completion.

"Generator Manufacturer" means the manufacturer of the Generator.

"Guaranteed Commercial Operation Date" has the meaning set forth in Section 6.3.1.

"Guaranteed Annual Output" means [anticipated annual capacity * 0.90 * Installed Capacity * hours during the Contract Year as adjusted for any System Emergency and/or Operational Constrained Energy Period].

"Guaranteed Major Milestone Deadline" means, for each of the Major Milestones, the date as set forth below:

- (a) delivery of all Wind Turbines to the Site – [Date];

- (b) delivery and installation of all transformers at the Site – **[Date]**;
- (c) execution of the Generation Interconnection Agreement – **[Date]**;
- (d) physical and electrical interconnection the Project's Interconnection Facilities with the applicable Transmission Provider's Transmission System – **[Date]**;
- (e) acquisition of Transmission Services by Seller pursuant to Section 3.1 – **[Date]**; and
- (f) issuance of all Permits – **[Date]**.

"Indemnitees" means, with respect to either Party, such Party, its successors and assigns, and the respective directors, officers, shareholders, employees, agents and representatives of such Party and its successors and assigns.

"Initial Term" has the meaning set forth in Section 2.1.

"Installed Capacity" means the product of (a) the nominal or "nameplate" capacity (expressed in MW) of each Generator multiplied by (b) the number of Generator installed at the Project.

"Generation Interconnection Agreement" or **"GIA"** means the interconnection agreement, in a form and substance reasonably acceptable to Purchaser, between the applicable Transmission Provider and Seller pursuant to which the Interconnection Facilities will be constructed, operated, and maintained during the Term.

"Interconnection Costs" means all costs and expenses related to the Interconnection Facilities.

"Interconnection Facilities" means the facilities and control and other equipment between the Project and the Delivery Point, including control and protective devices and metering facilities, necessary to physically and electrically interconnect, and maintain the interconnection of, the Project with the applicable Transmission Provider's Transmission System in order to effectuate the purposes of this Agreement, including the Project Substation and the line connecting the Project Substation to the Transmission System.

"Letter of Credit" means an irrevocable, transferable standby letter of credit that:

- (a) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, having a credit rating of:
 - (i) "A2" or higher from Moody's; or
 - (ii) "A" or higher from S&P;

(b) names the Party (and any of its permitted transferees) in whose favor such letter of credit is issued (a "**Beneficiary Party**") as the Person entitled to demand payment and present draw requests thereunder;

(c) is in the amount required pursuant to this Agreement;

(d) entitles the Beneficiary Party to make drawings in the aggregate up to the stated face amount thereof for the purpose of paying any and all amounts owing by the other Party;

(e) additionally entitles the Beneficiary Party to draw the entire amount then available for drawings thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date; and

(f) is otherwise in form and substance acceptable to the Beneficiary Party.

"**Long-Term Debt Rating**" means, with respect to any Person, the rating of such Person's long-term senior unsecured debt, as rated by S&P and Moody's.

"**Major Milestones**" means all of the following (each of which may be referred to in the singular as a "Major Milestone"):

(a) delivery of all Generator to the Site;

(b) delivery and installation of all transformers at the Site;

(c) execution of the Generation Interconnection Agreement;

(d) physical and electrical interconnection the Project's Interconnection Facilities with the applicable Transmission Provider's Transmission System;

(e) acquisition of Transmission Services by Seller pursuant to Section 3.1; and

(f) issuance of all Permits.

"**Major Milestone Deadline**" means, for each of the Major Milestones, the date as set forth below:

(a) delivery of all Wind Turbines to the Site – **[Date]**;

(b) delivery and installation of all transformers at the Site – **[Date]**;

(c) execution of the Generation Interconnection Agreement – **[Date]**;

(d) physical and electrical interconnection the Project's Interconnection Facilities with the applicable Transmission Provider's Transmission System – **[Date]**;

- (e) acquisition of Transmission Services by Seller pursuant to Section 3.1 – **[Date]**; and
- (f) issuance of all Permits – **[Date]**.

"Market Price" means for any hour an amount, stated in dollars per MWh, equal to the "Firm On-Peak," "Firm Off-Peak" or "Sunday and NERC Holidays" Dow Jones Mid-Columbia Electricity Index for the period in which such hour occurs. If any such index becomes unavailable during the Term, it shall be replaced for purposes of the preceding sentence by a replacement index that replicates as near may be the information provided by the above-described Dow Jones Mid-Columbia Electricity Indices.

"Mean Project Output" means _____ MWh per Contract Year [**Calculated by multiplying a mutually agreed upon capacity factor for the Project * the Installed Capacity * 8760**].

"Megawatt-hour" or **"MWh"** means a unit of Energy equal to one thousand kilowatt-hours.

"Meter" means an instrument or instruments meeting applicable Technical Requirements and electric industry standards used to measure and record the volume and other required delivery characteristics of the Energy delivered hereunder at the Delivery Point, as further defined in Section 8.1.

"Moody's" means Moody's Investor Services, Inc. and any successor thereto.

"MW" means a unit of power equal to one megawatt.

[**"National Broker"** means any nationally recognized firm engaged in the business of brokering Environmental Attributes. As of the date of this Agreement, such nationally recognized firms include Cantor Fitzgerald, New York, New York, NatSource, _____, _____ and Evolution Markets, _____, _____.]

"Non-Completion Termination Date" has the meaning set forth in Section 6.3.2(b).

"Operation Permits" means all of those Permits that are required to be obtained by Seller as a condition to Seller's right to operate the Project and sell Energy therefrom, as described in **Exhibit D**.

"Operational Constrained Energy Period" means any period in which Purchaser requires Seller to limit generation output or has determined that Energy may not be accepted by Purchaser due to (a) operational concerns with excess energy supply or other constraints, (b) insufficient load and energy sales or (c) effects from such acceptance that may result in operations inconsistent with Prudent Utility Practice.

"Operational Hours" means, for each Generator during any Contract Year, the period (expressed in hours or portions of an hour) in such Contract Year in which such Generator is physically and legally capable of producing power, less the sum of:

(a) any period (expressed in hours or portions of an hour) during such Contract Year in which, by reason of a System Emergency, Purchaser is unable to accept delivery of any Energy that such Generator is otherwise capable of generating; and

(b) any period (expressed in hours or portions of an hour) during such Contract Year in which such Generator is not operational as a result of a Force Majeure Event;

it being understood and agreed that for any given Contract Year for which Operational Hours are calculated, the deductions from Operational Hours for such period pursuant to (a) and (b) above shall be the same as the deductions from Base Hours for such period pursuant to clauses (a) and (c) of the definition of "Base Hours."

"Operational Reliability Period" means any period in which Purchaser requires Seller to produce generation output (a) due to operational or reliability concerns or circumstances involving insufficient generation supply or other Transmission System constraints, including (i) a significant change in load or (ii) operation of the project to provide voltage support or other system stability, or (b) to avoid effects that may result in operations inconsistent with Prudent Utility Practice.

"Permits" means all zoning approvals, permits, licenses, and other governmental approvals in final non-appealable form necessary to construct and operate the Project and sell Energy therefrom, all as contemplated by this Agreement, including the zoning approvals, permits, licenses, and other governmental approvals described in **Exhibit D**; provided, that any Permit from the Bureau of Land Management need be in final non-appealable form only to the extent that, under Applicable Law, it is possible to obtain such Permit in such form.

"Permitted Investments" means: (a) direct obligations of the United States of America, or of any agency thereof, or obligations guaranteed as to principal and interest by the United States of America, or of any agency thereof, in either case maturing not more than ninety (90) Days from the date of acquisition thereof; and (b) certificates of deposit issued by any bank or trust Seller organized under the laws of the United States of America (or any state thereof) and having capital, surplus and undivided profits of at least \$500,000,000, maturing not more than ninety (90) Days from the date of acquisition thereof.

"Person" means an individual, partnership, corporation, business trust, joint stock Seller, trust, unincorporated association, joint venture, governmental authority, limited liability Seller, or any other entity of whatever nature.

"Power Purchase Option" has the meaning set forth in Section 15.4.2.

"Power Purchase Option Notice" has the meaning set forth in Section 15.4.2.

"Prime Rate" means the rate published in *The Wall Street Journal* as the "Prime Rate" from time to time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

"Project" has the meaning set forth in the Recitals, as more particularly described in **Exhibit A-1** hereto and otherwise meeting the requirements of this Agreement, including having the Required Installed Capacity.

"Project Mechanical Availability Percentage" means, for any Contract Year and for all Generator agreed hereunder to be installed on the Site by Seller, a percentage calculated in accordance with the following formula:

$$\text{Project Mechanical Availability Percentage} = 100 \times \frac{\text{a fraction, the numerator of which equals the total actual output capability during such Contract Year for such Generator, and the denominator of which equals the Required Installed Capacity during such Contract Year for such Generator (adjusted for Scheduled Maintenance and any Force Majeure Event during such Contract Year)}}{\text{Required Installed Capacity}}$$

"Project Substation" means the substation, if any, to be constructed as part of the Project as more specifically described in **Exhibit C** hereto.

"Prudent Utility Practices" means:

(a) those practices, methods and acts that, when engaged in, are commonly used in the United States of America in prudent electrical engineering and operations to operate [type of generation] generation electrical equipment and related electrical equipment lawfully and with safety, reliability, efficiency, economy and expedition; or

(b) in the absence of the practices, methods and acts described in the immediately preceding clause (a), those practices, methods and acts that, when engaged in, are, in the exercise of reasonable judgment considering the facts known when engaged in, could then be expected to achieve the desired result consistent with Applicable Law, safety, reliability, efficiency, economy and expedition.

Prudent Utility Practices are not limited to optimum practices, methods or acts, but rather are a range of acceptable practices, methods or acts.

"PTCs" means production tax credits, if any, under section 45 of the Internal Revenue Code as in effect on the date of this Agreement or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from [type of generation] resources.]

"**Purchaser**" has the meaning set forth in the first paragraph of this Agreement.

"**Qualified Guarantor**" means a Person having a Long-Term Debt rating, during the term of the applicable guaranty, of at least BBB+ by S&P and at least Baa1 by Moody's.

"**Renewal Capacity Rate**" means the rate, expressed in dollars per MW, payable by Purchaser for capacity of the Project during the Renewal Term hereof. The Renewal Capacity Rate for each Contract Year during the Renewal Term is set forth in **Exhibit E** hereto under the column designated "Renewal Capacity Rate (\$ per MW)."

"**Renewal Energy Rate**" means the rate, expressed in dollars per MWh, payable by Purchaser for Energy (other than Excess Output) [and Environmental Attributes] generated by the Project during the Renewal Term hereof. The Renewal Energy Rate for each Contract Year during the Renewal Term is set forth in **Exhibit E** hereto under the column designated "Renewal Energy Rate (\$ per MWh)."

"**Renewal Notice**" has the meaning set forth in Section 2.2.

"**Renewal Rate**" means, collectively, the Renewal Capacity Rate, as applicable, and the Renewal Energy Rate for Energy and Excess Output.

"**Renewal Term**" has the meaning set forth in Section 2.2.

"**Required Installed Capacity**" means: [INSERT AMOUNT HERE] MW.

"**Scheduled Maintenance**" has the meaning set forth in Section 1.3 of **Exhibit I** hereto.

"**Security Documents**" means the Assignment and Security Agreement between Purchaser and Seller, and related documents executed as of the date hereof, whereby Purchaser is assigned and granted as security for Seller's obligations hereunder certain security interests in and to, and rights with respect to, the Project and contracts and other assets related thereto, including the rights contemplated by Section 16 hereof, subordinate only to [specified senior debt incurred or to be incurred to develop and construct the Project].

"**Seller**" has the meaning set forth in the first paragraph of this Agreement.

"**Seller Guarantor**" has the meaning set forth in Section 7.4.1.

"**Seller Lender**" means any Persons (or successors in interest thereof) lending money or extending credit (including any financing lease) to Seller for (a) construction, term or permanent financing or refinancing of the Project, (b) working capital or other ordinary business requirements of the Project (including maintenance, repair, replacement, or improvement of the Project), (c) any development financing, bridge financing, credit support, credit enhancement, or interest rate protection in connection with the Project or (d) the

purchase of more than a 50% interest (in aggregate) in the Project and the related rights from Seller.

"**Site**" has the meaning set forth in the Recitals, as more particularly described in **Exhibit A-2**.

"**S&P**" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

"**Stub Period**" means the period commencing on the Commercial Operation Date and ending on the immediately succeeding December 31; provided, however, that if the Commercial Operation Date occurs on December 31 or January 1, there shall be no Stub Period.

"**Support**" means the personnel and labor relating to, and supervision of, any of the following in connection with the procurement, construction, installation, start up and testing of the Project: subcontractors, materials, supplies, consumables, equipment, tools, construction equipment, transportation, data, drawings, plans, specifications and other goods, items, facilities and services (including technical and professional services).

"**System Emergency**" means a condition on the Transmission System (as determined by the applicable Transmission Provider), at the Project, or on transmission facilities used to deliver the Energy to or from the Delivery Point that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

"**Taxes**" means all *ad valorem*, property, income, occupation, utility, gross receipts, sales, use, excise, and other taxes, and all governmental charges, surcharges, licenses, permits, and assessments of every type and description.

"**Technical Requirements**" means those codes, standards, and specifications for the Meters mutually agreed upon by the Parties in writing as [_____], including bi-directional measurement capabilities.

"**Term**" means the Initial Term and the Renewal Term (but only if Purchaser exercises its option with respect to the Renewal Term pursuant to Section 2.2 hereof).

"**Termination Amount**" means, with respect to any Contract Year in which Purchaser exercises its right to terminate this Agreement pursuant to Section 2.6, the amount set forth in Exhibit J hereto for such Contract Year.

"**Test Power**" means the Energy produced by the Project during the testing thereof prior to the Commercial Operation Date.

"**Test Power Rate**" means the rate, expressed in dollars per MWh, payable by Purchaser for each MWh of Test Power delivered to Purchaser pursuant to this Agreement. The Test Power Rate is set forth in Section 3.3.1.

"**Transfer Option**" has the meaning set forth in Section 15.4.1.

"**Transfer Option Notice**" has the meaning set forth in Section 15.4.1.

"**Transmission Provider**" means (a) with respect to the Transmission System facilities from the Project to the Delivery Point, _____ or any replacement regional transmission organization or other Person that operates such Transmission System facilities and (b) with respect to the Transmission System facilities from the Delivery Point to Purchaser's electric system, _____ or any replacement regional transmission organization or other Person that operates such Transmission System facilities.

"**Transmission Services**" means transmission services (which shall be, at Purchaser's election, open access network integration transmission service or open access long-term firm point-to-point transmission service), ancillary services and control area services.

"**Transmission System**" means the transmission facilities now or hereafter operated by the applicable Transmission Provider.

"**WUTC**" means the Washington Utilities and Transportation Commission or its successor.

ARTICLE 2 TERM AND TERMINATION

2.1 Term. This Agreement shall become effective on the later of (a) the date of signature by both Parties and (b) [_____] (the "**Effective Date**"). The term of this Agreement shall commence on the Effective Date and, unless earlier terminated pursuant to Section 2.4, 2.5, 2.6 or 6.3.2(b), shall continue for [_____] years from the first Day of the first Contract Year and expire at 00:00 hours on the [_____] anniversary of the first Day of the first Contract Year (the "**Initial Term**"), but subject to Purchaser's right to extend such expiration date by exercising one or more of its renewal options as provided in Section 2.2.

2.2 Renewal Terms. Seller hereby grants to Purchaser the sole option to extend the Term of this Agreement beyond the Initial Term for one ___-year period (the "**Renewal Term**"). The Renewal Term shall commence immediately following the expiration of the Initial Term and shall expire on the ___ anniversary of the first Day of the first Contract Year.

In order to exercise its option to extend the Term of this Agreement through the Renewal Term, Purchaser, not less than one hundred eighty (180) Days prior to the expiration date of the Initial Term, shall notify Seller in writing of its exercise of such option

("Renewal Notice"). Upon the giving of the Renewal Notice, the Term of this Agreement shall thereupon be extended through the Renewal Term.

2.3 Submission of Agreement to FERC. If required under Applicable Law, not later than sixty (60) Days prior to the date on which Seller will commence deliveries of Energy hereunder to Purchaser, Seller shall submit this Agreement to FERC for acceptance pursuant to the Federal Power Act.

2.4 Purchaser to Endeavor to Obtain Transmission Services. Purchaser shall use commercially reasonable efforts to secure, on or before [_____], Transmission Services from the applicable Transmission Provider necessary to schedule the Energy and the Test Power from the Delivery Point to Purchaser's electric system. Purchaser shall not be required to secure such Transmission Services (a) absent a generation integration or transmission availability reports from the applicable Transmission Provider satisfactory to Purchaser or (b) if Seller has not entered into a large Generation Interconnection Agreement with the applicable Transmission Provider. If on or before [_____], Purchaser, notwithstanding its commercially reasonable efforts, does not secure Transmission Services from the applicable Transmission Provider, then Purchaser may terminate this Agreement by giving written notice of such termination to Seller, which notice, to be effective, must be given by Purchaser to Seller and received by Seller on or before [_____]. Upon the giving of any such notice of termination, this Agreement shall automatically terminate and neither Party shall have any liability to the other.

2.5 Change in Circumstances. Upon the occurrence of any material change, as determined by Purchaser in its sole discretion, in (a) Purchaser's economic requirements or resource portfolio requirements to serve its retail load or (b) the Project such that the Project no longer meets Purchaser's resource portfolio requirements to serve its retail load, Purchaser may terminate this Agreement by giving not less than thirty (30) days' prior written notice of such termination to Seller. Upon any such termination, neither Party shall have any liability to the other, except that Purchaser shall be obligated to pay to Seller the applicable Termination Amount set forth in the attached **Exhibit J** and Seller shall, at Purchaser's election (and subject to such payment), immediately transfer to Purchaser (i) all of Seller's rights, title and interests in and to the Project (including the Turbines and the Balance of Plant), the Permits, all rights of Seller to real property included in or benefiting the Site and (ii) all of Seller's rights, title and interests in, to and under any agreements related to the Project to which Seller is a party.

2.6 Failure to Receive Due Diligence Report. If the Due Diligence Report has not been delivered to Purchaser within ninety (90) Days following the execution of this Agreement, notwithstanding the Parties' best reasonable efforts to obtain such report, then this Agreement shall automatically terminate as of such date; provided, however, if the Due Diligence Report is not delivered within such 90-Day period, Seller may provide written notice to Purchaser that it wishes to attempt to cure any deficiency in the Project that prevented the Due Diligence Report from issuing, in which event, the termination of this

Agreement shall be delayed for an additional 120 Days pending remedial actions by Seller and the final review and issuance of the Due Diligence Report.

ARTICLE 3
PURCHASE AND SALE OF ENERGY [AND ENVIRONMENTAL
ATTRIBUTES]; DELIVERY; CURTAILMENT

3.1 Purchase and Sale of Energy. In accordance with and subject to the terms and conditions hereof, commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall sell and deliver to Purchaser at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, all rights, title and interests in and to the capacity of the Project[,] Energy [and the Environmental Attributes]. Prior to the Commercial Operation Date, Seller shall sell and deliver to Purchaser at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, all Test Power. Seller shall deliver Energy (including Test Power) to the Delivery Point at a power factor and quality consistent with the requirements of the Interconnection Agreement. Seller shall deliver the Energy (including Test Power) to Purchaser as generated at the Project. Seller shall obtain and maintain throughout the Term, at Seller's expense, all Transmission Services and related interconnection services and other services necessary to schedule the Energy (including Test Power) to the Delivery Point.

[3.2 Environmental Attributes.

3.2.1 Seller's Covenants, Representations and Warranties Concerning Environmental Attributes. Seller warrants and represents to Purchaser on a continuing basis that:

- (a) it owns or will own the Environmental Attributes as they come into existence;
- (b) it has not sold, pledged, assigned, transferred or otherwise disposed of, and will not sell, pledge, assign, transfer or otherwise dispose of, the Environmental Attributes to any Person other than Purchaser; and
- (c) all electricity generated by the Project meets one of the following standards for renewable resource generation: **[set forth mutually agreed-upon standard, e.g.,** (i) the standards promulgated under the Green-e Program developed by the Center for Resource Solutions and in effect on the date of this Agreement (http://www.greene.org/ipp/certified_products.html); or (ii) the standards promulgated under the Renew 2000 Project developed by the Northwest Environmental Advocates and in effect on the date of this Agreement (<http://www.cleanenergyguide.org/Certification/certification.htm>)].

Notwithstanding any provision of this Agreement to the contrary, Seller shall not use all or any portion of the Environmental Attributes and shall not assign, transfer, convey, encumber,

sell or otherwise dispose of all or any portion of the Environmental Attributes to any Person other than Purchaser. Seller further agrees that Seller shall make such filings and take such other actions as Purchaser may from time to time reasonably request in order to preserve and maintain the Environmental Attributes in accordance with the standards described in (c) above and to otherwise enable Purchaser to use, sell and transfer such Environmental Attributes in accordance with market standards.

3.2.2 Purchase and Sale of Environmental Attributes. For and in consideration of Purchaser's agreement herein to purchase from Seller the Energy on the terms and conditions set forth herein, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all rights, title, and interests in and to all Environmental Attributes related to the Energy, if any, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Term hereof. Seller shall, to the fullest extent permitted by Applicable Law, make the Environmental Attributes available to Purchaser immediately upon Seller's obtaining the Environmental Attributes.

3.2.3 Reporting of Ownership of Environmental Attributes. During the Term, Seller shall not report to any Person that the Environmental Attributes belong to any Person other than Purchaser, and Purchaser may report under any such program that the Environmental Attributes purchased hereunder belong to Purchaser.

3.2.4 Further Assurances. At Purchaser's request and expense, the Parties shall execute all such documents and instruments necessary or desirable to evidence the Environmental Attributes of to effect or evidence transfer of the Environmental Attributes to Purchaser or its designees. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give to the other Party copies of all documents it submits to the CAMD to effectuate or record any transfers.]

3.3 Purchase Price. The purchase price for the capacity of the Project[,] Energy [and Environmental Attributes] and the total compensation to Seller under this Agreement shall be as follows:

3.3.1 Test Power Rate. The purchase price for Test Power [and all Environmental Attributes related thereto] shall be \$_____ per MWh of Test Power.

3.3.2 After Commercial Operation Date. During the period from and including the Commercial Operation Date through the remainder of the Initial Term, the purchase price for all capacity of the Project shall be the Contract Capacity Rate for each MW of such capacity, and the purchase price for all Energy [and Environmental Attributes related thereto] shall be the Contract Energy Rate for each MWh of such Energy.

3.3.3 Credit for Excess Output. During the period from and including the first Contract Year through the remainder of the Term, Purchaser shall be entitled to a credit against (reduction of) the Contract Energy Rate or the Renewal Energy Rate, as applicable, paid for all Energy [and related Environmental Attributes] delivered or deemed delivered hereunder during each Contract Year for each MWh of such Energy that is in excess of 110% of the Mean Project Output ("**Excess Output**"). The amount of such credit for each Contract Year shall be equal to the Excess Output Credit calculated in accordance with Section 5.1.2 and **Exhibit F** hereto. Excess Output Credits from Seller to Purchaser shall be made available pursuant to Section 5.1.2 at the end of each Contract Year.

3.3.4 Prior Notice of Test Power Deliveries and Commercial Operation Dates. Seller shall give Purchaser prior written notice of the date on which deliveries of Test Power are expected to commence, which notice shall be given at the earliest practicable time but in no event less than ten (10) Days before such date.

Seller shall give Purchaser notice of the date upon which Commercial Operation Date is expected to occur, which notice shall be given at the earliest practicable time but in no event less than ninety (90) Days before such date. Seller shall also give Purchaser notice of the date upon which Commercial Operation Date is expected to occur not less than sixty (60) Days before such date and thirty (30) Days before such date.

3.3.5 Purchase Price During Renewal Term. In the event Purchaser exercises its option to extend the term of this Agreement for the Renewal Term, then during the Renewal Term the purchase price for all capacity of the Project shall be the Renewal Capacity Rate for each MW of such capacity, and the purchase price for all Energy [and all Environmental Attributes related thereto] shall be the Renewal Energy Rate for each MWh of such Energy.

3.3.6 Standard of Review. Absent the agreement of both of the Parties to any proposed change, the standard of review for changes to this Section 3.3 proposed by any Party, a non-Party or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra doctrine*).

3.4 Allocation of Taxes. Seller shall pay or cause to be paid all Taxes on or with respect to the Project and on or with respect to the delivery and sale of Energy [and/or Environmental Attributes] to Purchaser that are imposed before or upon the delivery of Energy at the Delivery Point. Purchaser shall pay or cause to be paid all Taxes (other than any Taxes for which Seller is liable under this Section 3.4) on or with respect to the delivery and sale of Energy [and/or Environmental Attributes] to Purchaser that are imposed after the delivery of the Energy to Purchaser after the Delivery Point. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such responsible Party shall reimburse the other for such Taxes upon request therefor. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Taxes.

In the event any of the sales of Energy [or Environmental Attributes] hereunder are to be exempted from or not subject to any particular Tax(es), Purchaser shall, promptly upon Seller's request therefor, provide Seller with all necessary documentation to evidence such exemption.

3.5 Curtailment.

3.5.1 Curtailment Due to Transmission System Emergency. Seller and Purchaser each acknowledge that System Emergencies may only be declared by the applicable Transmission Provider, and not by Seller or the merchant function of Purchaser. Purchaser shall curtail or acquiesce in the curtailment of deliveries of Energy if notified by the applicable Transmission Provider that a System Emergency exists, but such curtailment shall only continue for the duration of such System Emergency and then only to the extent required by such Transmission Provider. Seller shall take such actions as may be required by remedial action schemes (if any) specified in the Generation Interconnection Agreement to cause such curtailment and resume deliveries of Energy as soon after curtailment as is reasonably possible, safe and in accordance with Prudent Utility Practices.

3.5.2 Curtailment Due to Operational Concerns. Seller shall reduce the generation of the project when Purchaser has declared an Operational Constrained Energy Period. Purchaser shall notify Seller of the maximum amount of Energy generation, if any, during the Operational Constrained Energy Period and Seller shall ensure that the generation does not exceed such amount. Purchaser may provide such notices to Seller via telephone. Purchaser may not declare Operational Constrained Energy Periods during more than [_____] hours in any calendar year.

3.5.3 Dispatch During Operational Reliability Period. Seller shall dispatch the project "on" to the extent requested by Purchaser when Purchaser has declared an Operational Reliability Period. Purchaser shall notify Seller of the amount of Energy generation, if any, during the Operational Reliability Period, and Seller shall ensure that Energy generation meets such amount. Purchaser shall provide such fuel as may be necessary to dispatch the project "on" pursuant to such request by Purchaser during the Operational Reliability Period, and Purchaser shall pay Seller its reasonable operation and maintenance costs incurred on account of such dispatch. Any Energy produced by the project during an Operational Reliability Period shall be delivered to Purchaser at no charge (except as otherwise provided in this Section 3.5.3) at the Delivery Point pursuant to Section 3.1.

ARTICLE 4 CONSTRUCTION AND PURCHASER'S RIGHT TO MONITOR CONSTRUCTION

4.1 Design, Permitting, Construction, Financing, Operation and Maintenance of the Project. Seller shall site, develop, finance, permit and construct the Project. Seller agrees to provide to Purchaser monthly reports as to the status of the siting, development,

financing, permitting and construction of the Project and other matters reasonably related to Purchaser's interest in the Project and this Agreement.

Seller represents, warrants and covenants throughout the Term that:

(a) the Project will be designed, engineered, constructed, installed, operated and maintained in such a manner as to have a reasonably expected useful life of not less than twenty-five (25) years; and

(b) the Project will be designed, engineered, constructed and installed, and Energy will be sold by Seller to Purchaser, in compliance with all Permits and Applicable Law and in accordance with Prudent Electrical Practices.

It is understood and agreed by the Parties that the warranty and covenant set forth in (a) above is not a warranty and covenant that the Project will, in fact, have a useful life of not less than twenty-five (25) years, but only a warranty and covenant that Project will be designed, engineered, operated and maintained in accordance with Prudent Utility Practice to have an expected useful life of not less than twenty-five (25) years if maintained in accordance with the manufacturer's specifications.

4.2 Right to Monitor. During the design, procurement, construction, installation, start-up, testing, operation and maintenance of the Project, Seller shall permit Purchaser and its advisors and consultants to:

(a) monitor the construction of the Project, including the design and engineering, the procurement and installation of the Generator, start-up and testing, operation and maintenance of the Project, and Support necessary or desirable for the accomplishment of these tasks;

(b) monitor the design, engineering, construction and installation of the Project to determine whether it meets the specification of having a reasonably expected useful life of not less than twenty-five (25) years;

(c) prior to the Commercial Operation Date and as a condition precedent to the achievement of the Commercial Operation Date:

(i) review and monitor the contractors' performance and achievement of all initial performance tests and all other tests required under the Project construction contracts that must be performed in order to achieve completion, with respect to which the construction contracts shall provide that at least ten (10) Days before such tests begin the contractors shall deliver to Purchaser a schedule for the performance of such tests;

(ii) be present to witness the such initial performance tests and review the results thereof;

(d) perform such detailed examinations, inspections, quality surveillance and tests as, in the judgment of Purchaser, are appropriate and advisable to determine that:

(i) the Generator have been designed, engineered and installed in accordance with this Agreement;

(ii) the Balance of Plant has been designed, engineered, constructed and installed in accordance with this Agreement; and

(iii) that all performance guarantees pursuant to this Agreement have been met;

(e) verify that the following are paid when due:

(i) all real property Taxes imposed before the Commercial Operation Date on real property included in or benefiting the Site;

(ii) Taxes imposed with respect to any Generator before its transfer to Seller;

(iii) Taxes based on or measured by Seller's net or gross income; and

(iv) any retail sales, use or similar Tax on the transfer, sale or use of the Project or any part thereof to or by Seller or any contractor of Seller ;

(f) review and discuss periodic status reports on the progress of the design, construction and installation of the Project, which reports shall be provided by Seller to Purchaser not less frequently than once a month; and

(g) be provided with a list of recommended operating spare parts lists for all equipment supplied.

4.3 No Warranty, Representation or Endorsement. No monitoring, review, consent, verification, advice, recommendation, authorization, notice, witness, inspection, test or any other act by Purchaser (and no delay or failure by Purchaser to monitor, review, approve, consent, verify, advise, recommend, authorize, notify, witness, inspect, test or otherwise act) regarding the procurement, construction, installation, start-up, testing, operation or maintenance of the Project shall constitute or be interpreted or construed as, or be relied upon or held out by Seller or any other Person as, any waiver, warranty, representation, covenant or endorsement by Seller.

ARTICLE 5
BILLING AND PAYMENTS

5.1 Billing and Payment. Billing and payment for the capacity of the Project[,] Energy (including Test Power) [and all associated Environmental Attributes] sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as set forth in this Section 5.1.

5.1.1 Calculation of Available Capacity, Energy Delivered or Deemed Delivered; Invoices and Payment. For each calendar month during the Term, commencing with the first calendar month in which Energy is delivered by Seller to Purchaser in accordance with the terms of this Agreement, Seller shall calculate:

- (a) the amount of the available capacity of the Project and of Energy delivered to Purchaser during such calendar month as determined from recordings produced by Meters at or near 2400 hours on the last Day of the calendar month in question; and
- (b) any credits owed to Purchaser as a result of hourly forecasts errors pursuant to Section 7.2.

Not later than the tenth Day of each calendar month (commencing with the calendar month next following the calendar month in which Energy is first delivered by Seller to Purchaser in accordance with the terms of this Agreement), Seller shall deliver to Purchaser an invoice showing the available capacity of the Project and the amount of such Energy delivered to Purchaser by Seller [and PTC's related thereto] during the immediately preceding calendar month and Seller's computation of the amount due Seller in respect thereof.

Not later than the later to occur of the following (herein called the "**Due Date**"):

- (i) the twentieth (20th) Day of the calendar month immediately following the calendar month to which Seller's invoice relates (or the next succeeding Business Day, if such twentieth Day is not a Business Day); or
- (ii) the tenth (10th) Day after receipt by Purchaser of Seller's monthly invoice (or the next succeeding Business Day, if such tenth Day is not a Business Day);

Purchaser shall pay to Seller, by wire transfer of immediately available funds to an account specified in writing by Seller for such purpose or by any other means agreed to by the Parties in writing from time to time, the amount set forth in such monthly invoice that is due and owing to Seller. In no event shall Purchaser be obligated to pay Seller for any capacity of the Project that is in excess of the Installed Capacity.

5.1.2 Excess Output. At the end of each Contract Year, Seller shall calculate the amount of Excess Output, if any, delivered or deemed delivered to Purchaser

hereunder during such Contract Year, which determination shall be made from recordings produced by the Meters through 2400 hours on the last Day of each Contract Year.

Not later than 10 Days after the end of such Contract Year, Seller shall deliver to Purchaser an invoice showing the amount, if any, of Excess Output delivered to Purchaser by Seller pursuant hereto during such Contract Year and Seller's computation of the Excess Output Credit, which Excess Output Credit shall be calculated in accordance with the formula set forth in **Exhibit F** hereto ("**Excess Output Credit**").

If an Excess Output Credit is owing, Purchaser shall have the right under Section 5.1.4 to set off such credit from one or more subsequent invoices payable to Seller.

5.1.3 Disputed Invoices. Within one hundred twenty (120) Days after receipt of any invoice, Purchaser may provide written notice to Seller of any alleged error therein. If Seller notifies Purchaser in writing within thirty (30) Days of receipt of such notice that Seller disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within five (5) Business Days following Seller's response, for the purpose of attempting to resolve the dispute. If the Parties do not resolve the dispute within thirty (30) Days after such initial meeting, either Party may proceed to seek whatever remedy may be available to such Party at law or in equity. If Seller is found to be in error, Seller shall refund to Purchaser the amount that Purchaser paid in excess of the amount that Purchaser actually owed plus interest on such excess payment from the date the same was paid by Purchaser to (but not including) the date of refund thereof is actually received by Purchaser from Seller, such interest to be at an annual rate equal to the Prime Rate in effect as of the date such payment was made by Purchaser plus two percent (2%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law.

The rights of the Parties set forth in this Section 5.1.3 are in addition to, and not in lieu of, the rights set forth in Section 7.4.

5.1.4 Setoffs and Deductions. Purchaser shall have the right to set off any amount due Seller under this Agreement against any amount due Purchaser from Seller hereunder.

5.1.5 Interest on Past Due Amounts. Any payment not made within the time limits specified in this Section 5.1 shall bear interest from the Due Date of such payment through (but not including) the date such payment is actually received by Seller or Purchaser, as the case may be. Such interest shall accrue at an annual rate equal to the Prime Rate then in effect plus two percent (2%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law.

5.1.6 Form and Transmittal of Invoices. Statements or invoices shall be sent to Purchaser by mail or facsimile to the address or facsimile number designated in Section 11.1. All invoices must be accompanied with certified telemetry or other metering

information as required in Section 8.1.1. Purchaser may change the address or facsimile number by providing written notice thereof to Seller. Each invoice shall be in a form and substance reasonably acceptable to both Seller and Purchaser.

**ARTICLE 6
INTERCONNECTION, CONSTRUCTION, OPERATION AND
PERFORMANCE GUARANTEES**

6.1 Interconnection.

6.1.1 Generation Interconnection Agreement and Interconnection Facilities. Seller shall enter into and shall maintain throughout the Term a Generation Interconnection Agreement (GIA) with the applicable Transmission Provider. Pursuant to the GIA, such Transmission Provider and Seller shall design, finance, install, maintain, and operate the Interconnection Facilities as required under the Interconnection Agreement.

6.1.2 Purchaser's Right of Review of the Generation Interconnection Agreement; Date for Required Completion of Interconnection Facilities; Payment of Interconnection Costs. Before Seller enters into the Generation Interconnection Agreement, Seller agrees to provide to Purchaser with the final draft of such Agreement as and when such draft is made available to Seller. Purchaser shall have the right to comment on such draft within ten (10) Business Days after the same is provided to Purchaser by or on behalf of Seller and Seller shall use reasonable efforts to cause Purchaser's comments to be incorporated into the GIA as executed and delivered by the parties thereto. Notwithstanding anything expressed or implied herein to the contrary:

(a) the Generation Interconnection Agreement shall provide for the completion of all Interconnection Facilities no later than _____; and

(b) As between Seller and Purchaser, Purchaser shall have no liability for the payment of any Interconnection Costs.

6.2 Operation and Maintenance.

6.2.1 General. Seller shall submit a written annual maintenance plan for the coming year no later than 60 Days prior to the start of each Contract Year. Such plan shall be subject to Purchaser's acceptance. Any and all changes to such plan shall be immediately communicated to Purchaser in writing and shall be subject to Purchaser's acceptance. Seller agrees to operate and maintain the Project, the Interconnection Facilities, its Meters (if any), and all other equipment and systems interconnecting with the Interconnection Facilities or the interconnected Transmission System in accordance with the applicable manufacturer's specifications and in a manner that is reasonably likely to:

(a) maximize the output of Energy [and Environmental Attributes] from the Project consistent with Prudent Utility Practices; and

(b) result in an expected useful life for such facilities of not less than twenty-five (25) years;

all in compliance with all Permits and applicable laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of any governmental authority, and in accordance with Prudent Utility Practice.

6.2.2 Operation and Maintenance Plan. Seller shall inspect, maintain and repair the Project and the components thereof in accordance with Prudent Utility Practices, and shall keep records with respect to inspections, maintenance, and repairs thereto. Upon request by Purchaser, Seller shall make available to Purchaser during Seller's regular business hours all plans and records of such inspections, maintenance, and repairs.

6.2.3 Coordination of Project Operation. Seller shall operate the Project on a continuous, reliable and sustained basis until the end of the Term, subject to curtailments pursuant to Section 3.5 and outages in accordance with **Exhibit I** hereto. The Parties shall coordinate operation of the Project with Purchaser's electric system in accordance with such **Exhibit I**. In addition, Seller shall strive to cooperate in good faith with Purchaser's reasonable maintenance scheduling requests consistent with Prudent Utility Practices so as to maximize Purchaser's return on its third-party sales of the Energy [and Environmental Attributes].

6.3 Commercial Operation Date Guarantee; Per Generator Delay Payments.

6.3.1 Guaranteed Commercial Operation Date. Seller shall cause the Commercial Operation Date to occur, including causing each Generator to achieve Generator Completion by, [_____] (the "**Guaranteed Commercial Operation Date**").

6.3.2 Delay Payments.

(a) For each Day after the Guaranteed Commercial Operation Date that the Commercial Operation Date has failed to occur, Seller agrees to pay Purchaser *per diem* delay liquidated damages on a per Generator basis in an amount calculated as provided below (the "**Delay Payment**"). Except as provided below in this Section 6.3.2, Delay Payments on a per Generator basis shall be paid by Seller to Purchaser for each Day that each Generator is late in achieving Generator Completion, commencing with the Day after the Guaranteed Commercial Operation Date through (but not including) the Commercial Operation Date.

The Delay Payment for each Generator that has failed to achieve Generator Completion by the Guaranteed Commercial Operation Date shall be an amount equal to the

product of (x) _____ dollars (\$_____) multiplied by (y) the number of Days from (and including) the Day after the Guaranteed Commercial Operation Date to (but not including) the date upon which such Generator achieves Generator Completion.

Purchaser shall not be entitled to any Delay Payment hereunder with respect to any Generator to the extent Seller's delay in achieving Generator Completion with respect to such Generator was caused by:

- (i) Purchaser;
- (ii) a delay due to a Force Majeure Event; or
- (iii) the failure of Purchaser to secure Transmission Services from the applicable Transmission Provider.

In the event Seller's delay in achieving Generator Completion with respect to a Generator is caused by any of the events described in (i), (ii) or (iii) above, then with respect to the affected Generator(s) the Guaranteed Commercial Operation Date shall be extended by a number of Days equal to the period of such delay. Except as otherwise provided herein, Purchaser and Seller agree that the remedies provided for in this Section 6.3.2(a) shall be the exclusive remedies of Purchaser for Seller's breach of its obligation under Section 6.3.1.

The maximum liquidated damages payable by Seller in connection with delays in achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date shall be _____ dollars (\$_____). Seller shall pay such amount (i.e., _____ (\$_____)) to Purchaser as liquidated damages upon any termination of the Project or this Agreement pursuant to Section 6.3.2(b).

(b) If for reasons other than the termination of this Agreement pursuant to Section 2.4 or 2.5, Seller fails to complete a Major Milestone by the Guaranteed Major Milestone Deadline therefor or fails to achieve the Commercial Operation Date as of a date that is [_____] Days after the Guaranteed Commercial Operation Date (the "**Non-Completion Termination Date**"), Purchaser may at any time prior to the Commercial Operation Date terminate this Agreement; provided, that if the delay in achieving the Commercial Operation Date is caused by any of the events (i), (ii), and (iii) in Section 6.3.2(a), then the Non-Completion Termination Date shall be extended by a number of Days equal to the period of such delay, but in no case to a date later than [_____]. Following such termination, Seller shall owe Purchaser the Delay Payments as set out in Section 6.3.2(a) [**THE INITIAL NONCOMPLETION TERMINATION DATE SHOULD BE THE DATE AS OF WHEN THE MAXIMUM DELAY PAYMENTS PERMITTED UNDER THE AGREEMENT WILL HAVE BEEN INCURRED, PURSUANT TO SECTION 6.3.2(a).**]

6.3.3 Security for Delay Payments. Concurrent with execution of this Agreement, Seller has provided to Purchaser a Letter of Credit, available for drawings solely

for a default in Seller's obligation to pay Delay Payments as set forth in this Section 6.3. Such Letter of Credit is in the amount of **[the maximum amount of delay damages as set forth in Section 6.3.2(a)]**. Seller shall cause such Letter of Credit to remain in place until each of the following has occurred: (a) the Commercial Operation Date has occurred and (b) Purchaser has certified to the issuer of the Letter of Credit that any Delay Payment due from Seller has been paid.

ARTICLE 7 PROJECT GUARANTEES

7.1 Annual Output Guarantee. Seller warrants and covenants that the Energy output for each Contract Year, as calculated immediately following the end of such Contract Year, shall have been no less than the Guaranteed Annual Output. For each MWh that the actual Energy output during the Contract Year is less than the Guaranteed Annual Output for such Contract Year, Seller shall pay Purchaser liquidated damages in the amount of the Cost to Cover for such MWh of Energy. Notwithstanding the foregoing, Purchaser shall not be entitled to any liquidated damages under this Section 7.1 to the extent Seller's failure to meet the Guaranteed Annual Output was caused by a Transmission Provider, Purchaser or a Force Majeure Event.

7.2 Hourly Guarantee. Not later than forty-five (45) minutes prior to the start of each hour during the Contract Term, Seller shall provide to Purchaser a forecast of the Project output for the next schedule hour to be delivered to the Delivery Point. If the Project output actually delivered to the Delivery Point in such hour is less than the forecast amount supplied by Seller by more than twenty percent (20%), Purchaser shall be entitled to a credit, against amounts otherwise due and owing by Purchaser to Seller, in an amount equal to the product of (a) the amount of Energy greater than twenty percent (20%) of the forecast amount not delivered to the Delivery Point multiplied by (b) the difference between the Market Price for such amount of Energy in such hour and the purchase price for such amount of Energy pursuant to Section 3.3.

7.3 Project Availability Guarantee.

7.3.1 Guaranteed Project Availability. Seller warrants and covenants that for each Contract Year during the Initial Term, as calculated at the beginning of the next succeeding Contract Year, the Project Mechanical Availability Percentage shall not be less than ninety-eight percent (98%) of the Required Installed Capacity for such Contract Year.

7.3.2 Payment of Amounts Owing for Failure of Project Mechanical Availability Percentage to Meet Project Availability Guarantee. For each percentage point (rounded to the nearest 1/100 of one percent) by which the Project Mechanical Availability Percentage for any Contract Year is less than ninety-eight percent (98%) of the Required Installed Capacity for such Contract Year, Seller shall pay Purchaser liquidated damages in an amount equal to the product of (a) the amount of such percentage points (as so

rounded) multiplied by (b) the Required Installed Capacity multiplied by (c) the Contract Capacity Rate.

7.3.3 Payment of Amounts Owing for Failure to Meet Project Availability Guarantee. For the second Contract Year and for each Contract Year thereafter, no later than the thirtieth (30th) Day of such Contract Year, Seller shall deliver to Purchaser an invoice showing Seller's computation of the actual Energy output and the Project Mechanical Availability Percentage for the immediately preceding Contract Year and the amount of liquidated damages due Purchaser in respect thereof, if any. Seller shall pay to Purchaser, by wire transfer of immediately available funds to the account specified in writing by Purchaser for such purpose or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in each such invoice. Any disputed invoices shall be treated as set forth in Section 5.1.3.

7.4 Seller Guaranty; Additional Security; Financial Statements.

7.4.1 Delivery of Guaranty for Output Obligations. With respect to the obligations of Seller set forth in Sections 6.3, 7.1, 7.2 and 7.3, Seller shall cause one or more of its respective Affiliates (each a "**Seller Guarantor**") having an Earnings-to-Interest Ratio of at least 2.00, to execute and deliver to Purchaser prior to the Commercial Operation Date a guaranty in favor of Purchaser, in the form attached as **Exhibit G**, under the terms of which Seller Guarantor unconditionally guarantees the full and prompt payment of Seller's payment obligations of this Agreement, in a maximum aggregate amount not to exceed _____ dollars (_____). Such Guaranty shall remain in effect for the Term and thereafter until Purchaser has certified to the Guarantor that no damages are owed by Seller.

7.4.2 Additional Security. In lieu of the obligation to provide a guaranty as set forth in Section 7.4.1, or in the event that such a guaranty has been provided and at any time subsequent thereto Seller Guarantor shall no longer have an Earnings-to-Interest Ratio of at least 2.00 as determined at the end of any calendar quarter during the Term based on the Seller Guarantor's interest coverage at the end of the twelve (12)-month ending with such calendar quarter, then Seller shall provide to Purchaser Additional Security in the amount of _____ dollars (\$_____) and for the term of the guaranty described in Section 7.4.1(a). In the event Seller fails to provide such Additional Security within five (5) Business Days, then an Event of Default shall be deemed to have occurred pursuant to Section 12.1.1(f) hereof, and Purchaser shall be entitled to exercise any of the remedies set forth in Article 12 hereof.

7.4.3 Cash As Additional Security. If such Additional Security consists of cash, the escrow agreement with the applicable Custodian (to which Seller, Seller Guarantor and Purchaser shall be parties) shall provide, without limitation, that:

- (a) such cash shall be invested by the Custodian at the direction of Seller in such Permitted Investments as Seller shall select; and

(b) Seller shall be entitled, on a current basis, to all investment earnings derived from all investments of such cash.

The fees and expenses of such Custodian shall be paid by Seller.

7.5 Financial Statements.

Seller shall provide to Purchaser the following:

(a) within forty-five (45) Days after the close of each calendar quarter (commencing with the calendar quarter ending _____), the unaudited financial statements of Seller Guarantor for the calendar quarter just ended; and

(b) within one hundred and twenty (120) Days after the close of each fiscal year (commencing with the fiscal year ending _____), the unaudited financial statements of Seller Guarantor for the fiscal year just ended; provided, that if Seller Guarantor otherwise has audited financial statements prepared for the fiscal year in question, then such audited financial statements of Seller Guarantor shall be provided in lieu of the aforementioned unaudited financial statements.

ARTICLE 8 MEASUREMENT AND METERING; PROJECT DATA

8.1 Metering Equipment.

Seller shall provide and cause to be installed, all metering (including meters at any Project substation identified as the Delivery Point) and data processing equipment needed for the registration, recording, and transmission of information regarding the Energy generated from the Generator and delivered to the Delivery Point, real and reactive power output, voltage output, current output, and other related parameters that are required for computing the payments due to Seller from Purchaser ("**Meters**"). Upon installation, the Meters shall become the property of Purchaser. Purchaser shall operate and maintain all such equipment in accordance with Prudent Utility Practices. All Meters and data processing equipment shall meet or exceed the Technical Requirements.

8.2 Measurements. Readings of the Meters shall be conclusive as to the amount of Energy delivered under this Agreement; provided, that if the Meters are discovered to be inaccurate pursuant to Section 8.3 below and the Parties do not agree on the actual energy delivered during the period when the Meters were registering inaccurately, the period to be used for purposes of calculating measurements pursuant to this Section 8.2 shall be one-half of the period from the date of the last previous test of the Meter through the date of the test that found the Meters to be inaccurate, but in no event more than one hundred eighty (180) Days from the date of the last previous test of such the Meters.

8.3 Testing and Correction.

8.3.1 Required Testing by Seller; Purchaser's Right to Conduct Tests; Testing of Purchaser's Meters. The accuracy of Meters shall be tested and verified not less than annually and at Seller's expense. Such annual testing and verification shall be performed within thirty (30) Days following the beginning of each Contract Year by a third party selected by Purchaser and approved in writing by Seller. In addition, at Seller's option, the accuracy of the Meters may be tested and verified at Seller's expense at more frequent intervals. Seller shall provide to Purchaser at least twenty (20) Days' prior written notice of the date upon which any such test is to occur. Purchaser and its consultants and representatives shall have the right to be present at and observe each such test. Seller shall prepare a written report setting forth the results of each such test, and shall provide Purchaser with copies of such written report not later than thirty (30) Days after completion of such test.

8.3.2 Standard of Meter Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of any Meter:

(a) If Seller disputes a Meter's accuracy or condition, it shall so advise the Purchaser in writing.

(b) Purchaser shall, within fifteen (15) Days after receiving such notice, advise Seller in writing as to its position concerning the Meter's accuracy and reasons for taking such position.

(c) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause an unaffiliated third-party engineering Seller mutually acceptable to the Parties to test the Meter that is the subject of dispute.

(d) If such Meter is found to be inaccurate by more than two percent (2%) or if such Meter is for any reason out of service or fails to register, then the Parties shall use their best efforts to estimate the correct amounts of energy delivered during the periods affected by such inaccuracy, service outage or failure to register by the best available means. In the event that, as a result of such estimate: (i) the amount of Energy credited to Purchaser is decreased, Seller shall reimburse Purchaser for any overpayment made by Purchaser, such reimbursement to be in the form of (A) a deduction from the next succeeding payment or payments by Purchaser for electrical energy due Seller pursuant to Section 3.3 or (B) cash, if no such succeeding payments in an amount exceeding the amount of such overpayment are or shall be due; or (ii) the amount of Energy credited to Purchaser is increased, Purchaser shall pay Seller for such increased credit for Energy, if any, at the purchase price set forth in Section 3.3 which is effective for the periods during which such Energy is estimated to have been delivered. Notwithstanding the foregoing, if, upon test, Purchaser's

meters for determining amounts of energy delivered under this Agreement are found to be inaccurate by not more than two percent (2%), then any previous recordings of such meters shall be deemed accurate. Purchaser shall promptly cause meters found to be inaccurate to be adjusted to correct to the extent practicable such inaccuracy.

8.4 Real Time Data; Other Project Data.

8.4.1 Real Time Data. Seller shall make available to Purchaser on a real-time, Generator-by-Generator basis, (a) the information and data referred to in Section 8.1, and (b) any other data from the Project that Seller receives on a real time basis. Seller shall provide such real time data to Purchaser on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Purchaser shall also receive the data in four second intervals). Seller shall present the real-time data in an electronic form that interacts seamlessly with real-time electronic data received by Purchaser from any other [type of generation] project operated by Seller or an Affiliate of Seller. For the purpose of receiving the real-time data contemplated in this Section 8.4.1, Seller shall provide to Purchaser either a terminal or a direct interface with Seller's equipment at the Site.

8.4.2 Other Project Data. Within thirty (30) Days after the end of each calendar month, Seller shall provide to Purchaser a monthly report in electronic format acceptable to Purchaser, which report shall include information on the Actual Operational Hours of the Generator, summaries of production of the Generator, any other significant events related to the operation of the Generator and any supporting information that Purchaser may reasonably request. In addition, Seller shall maintain an electronic fault log of operations of the Project (including all information reasonably required to confirm Project and Generator availability) during each hour of the Term beginning as of the Commercial Operation Date and shall provide such log to Purchaser on a monthly basis. Without limiting the foregoing, Seller shall promptly furnish Purchaser with copies of such plans, specifications, records and other information and data relating to the Project, any construction and installation activities, the arrangements between Seller and the applicable Transmission Provider, the ownership, operation, use or maintenance of the Project, or Seller Guarantor's Earnings-to-Interest Ratio, as may be reasonably requested by Purchaser from time to time. Purchaser shall maintain the confidentiality of Seller's confidential and proprietary information provided pursuant to this section in accordance with the terms and provisions of a confidentiality agreement mutually agreed to by the Parties.

ARTICLE 9 RECORDS; REPORTS AND REVIEWS

9.1 Maintenance of Records; Quarterly Reports.

9.1.1 Maintenance of Records. Each Party shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of each statements of charges submitted hereunder for a period of two (2) years from the date the applicable statement was delivered.

9.1.2 Quarterly Reports. Within thirty (30) Days after the end of each calendar quarter, Seller shall provide to Purchaser a written quarterly report, which shall include:

- (a) information on the Average Annual Output;
 - (b) summaries of production of the Generator;
 - (c) any other significant events related to the operation of the Generator;
- and
- (d) any supporting information that Purchaser may reasonably request.

9.2 Right To Review.

9.2.1 Review Rights. Purchaser shall have the right, upon reasonable notice to Seller and during Seller's regular business hours and without materially interfering with the conduct of Seller's business, to access and review all of Seller's records, reports, data, calculations and statements, maintained by Seller pursuant to Section 9.1.1, that Seller provides or is obligated to provide to Purchaser under this Agreement. Purchaser shall bear Purchaser's costs of performing such review, provided that Seller cooperates with such review. Purchaser shall not be obligated to pay or reimburse Seller for any costs (including the cost of photocopies) that Seller may incur as a result of such review.

9.2.2 Refunds of Overpayments and Underpayments. Should any review performed pursuant to Section 9.2.1 reveal a billing error or errors that resulted in an overpayment by Purchaser, Seller shall refund to Purchaser the amount of the overpayment plus interest thereon from the date such overpayment was made by Purchaser to (but not including) the date Purchaser actually receives the refund thereof from Seller, such interest to be calculated at an annual rate equal to the Prime Rate in effect on the date such overpayment was made by Purchaser plus two percent (2%), but not in excess of the highest interest rate permitted under Applicable Law. Should any review performed pursuant to Section 9.2.1 reveal a billing error or errors that resulted in an underpayment by Purchaser, Purchaser shall refund to Seller the amount of the underpayment plus interest thereon from the Due Date of the applicable payment to (but not including) the date Seller actually receives the refund thereof from Purchaser, such interest to be at an annual rate equal to the Prime Rate in effect on the date such overpayment was made by Purchaser plus two percent (2%), but not in excess of the highest interest rate permitted under Applicable Law.

ARTICLE 10 RELEASE AND INDEMNITY; INSURANCE

10.1 Release and Indemnity. Each Party releases and shall defend, indemnify and hold harmless each of the Indemnitees of the other Party from and against all claims, losses, harm, suits, liabilities, obligations, damages, penalties, costs and expenses (including, but not

limited to, reasonable attorneys' fees and any incremental taxes payable by the Indemnitees on the amount of any indemnities paid by the indemnifying Party to the Indemnitees pursuant to this Section 10.1) of whatsoever kind and nature (including, without limitation, relating to the injury to or death of any person, including employees of the indemnifying Party) which may at any time or from time to time be imposed on, incurred by or asserted against the Indemnitees, arising out of or in connection with the construction, installation, start up and testing of the Project, the Interconnection Facilities and the Meters, the delivery of energy from the Project to the Delivery Point, the ownership, operation, use or maintenance of the Project, or, in the case of Seller as indemnifying Party, the failure of Seller to have observed or performed any of Seller's obligations or liabilities under this Agreement. To the fullest extent permitted by applicable law, the foregoing shall apply regardless of any fault, negligence, strict liability or product liability of the Indemnitees and shall apply to any claim, action, suit or proceeding brought by any employee of the indemnifying Party. However, the indemnifying Party shall not be required to so defend, indemnify or hold harmless such any Indemnitee from any claim, loss, harm, liability, damage, cost or expense to the extent the same is caused by or results from the negligence of such Indemnitee.

10.2 Insurance.

10.2.1 Insurance During Construction. During the construction of the Project, Seller shall, at Seller's expense, maintain or cause to be maintained property damage insurance covering all properties at the Site on an "all-risk" basis (including earthquake, tornado and flood), for the full replacement value of such properties.

10.2.2 Insurance During Commercial Operation. From and after the Commercial Operation Date, Seller shall, at Seller's expense, maintain or cause to be maintained property and casualty loss insurance for the full replacement value of the Project and other appropriate insurance for the Project in accordance with Prudent Utility Practices, including the following:

(a) Commercial general liability insurance including all the usual coverages known as Premises/Operations Liability, Products/Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractors Liability, Stop Gap/Employers Liability, Explosion, Collapse, or Underground (XCU), Broad Form Property Damage and Fire Damage Legal. Such insurance coverages must provide the following minimum limits:

(i) Bodily Injury, Property Damage, Personal Injury & Advertising Injury:

(A) \$1,000,000 General Aggregate;

(B) \$1,000,000 Products & Completed Operations Aggregate;

(C) \$1,000,000 Personal & Advertising Injury;

(D) \$5,000,000 Each Occurrence;

(E) \$500,000 Fire Damage Legal;

(ii) Stop Gap Employers Liability:

(A) \$1,000,000 Each Accident;

(B) \$1,000,000 Disease - Policy Limit;

(C) \$1,000,000 Disease - Each Employee;

(b) All-risk property insurance including earthquake, tornado, hurricane and other high wind weather conditions, and flood, subject to appropriate sublimits, covering physical loss or damage to all real and personal property located at the Site;

(c) Such insurance as provided under item (a) above shall be endorsed to include Puget Sound Energy, Inc., its officers, directors, employees and agents as additional insureds and shall not be reduced or canceled without sixty (60) Days' prior written notice to Purchaser. In addition, Seller's insurance shall be primary as respects Purchaser, and any other insurance maintained by Purchaser shall be excess of and not contributing insurance with Seller's insurance.

All insurance policies required to be obtained hereunder shall provide insurance for occurrences throughout the Term. All insurance coverage pursuant hereto shall be issued by an insurer with a Best's Rating of not less than "A-" or such other insurer as is reasonably acceptable to Purchaser. Upon Purchaser's request, Seller shall provide to Purchaser (1) a copy of the insurance policy's declaration pages, showing the insuring Seller, policy effective dates, limits of liability and the schedule of forms and endorsements, (2) a copy of the endorsement naming Puget Sound Energy, Inc., its officers, directors, employees and agents as additional insureds, showing the policy number, and signed by an authorized representative of the insurance Seller, (3) a copy of the "endorsements form list" to the insurance policy showing endorsements issued on the policy, and including any Seller-specific or manuscript endorsements and (4) a copy of an endorsement stating that the coverages provided by the policy to Purchaser or any other additional insured shall not be terminated, reduced or otherwise materially changed without providing at least sixty (60) Days' prior written notice to Purchaser, a copy of a "separation of insureds" or "severability of interests" clause, indicating essentially that - except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured - the insurance applies as if each insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (Commercial General Liability Insurance).

ARTICLE 11
NOTICES

Any notice or other communication required, permitted or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder:

To Purchaser:

Puget Sound Energy, Inc.

Phone: 425-

Fax: 425-

To Seller:

Phone: _____

Fax: _____

Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

- (a) if received by first class, registered, or certified United States mail or overnight delivery service, return receipt requested, postage prepaid;
- (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or paid through an arrangement with such carrier, the next Business Day after the same is delivered by the sending Party to such carrier;
- (c) if sent by fax and if concurrently with the transmittal of such fax the sending Party contacts the receiving Party at the phone number set forth above to indicate such fax has been sent (which indication by phone made be done by leaving a voicemail for the receiving Party at such phone number), at the time such fax is transmitted by the sending Party as shown by the fax transmittal confirmation of the sending Party; or
- (d) if delivered in person, upon receipt by the receiving Party.

Either Party may from time to time change the recipient or its address by giving the other Party notice of the change in accordance with this section.

ARTICLE 12
DEFAULTS AND REMEDIES

12.1 Events of Defaults and Rights Upon Event of Default.

12.1.1 Events of Default. If either Party (a "**Defaulting Party**"), or Seller Guarantor pursuant to clauses (c) and (d) below:

(a) fails to pay any amount due hereunder, when, after notice by the non-defaulting Party to the Default Notice Parties is delivered in accordance with Article 11, and such failure is not cured, by payment of the amount due plus interest at an annual rate equal to the Prime Rate then in effect plus 2% from the date due until paid (but in no event more than the maximum rate permitted by Applicable Law), within ten (10) Business Days after the date that such notice is received by the Defaulting Party;

(b) otherwise defaults (other than pursuant to Section 12.1.1(c), (d), (e) or (f)) in the performance of its obligations under this Agreement if such default has not been cured by the Defaulting Party within sixty (60) Days after the date of receipt by the Default Notice Parties of written notice from the non-defaulting Party setting forth, in reasonable detail, the nature of such default; provided, that in the case of a default that is not reasonably capable of being cured within the sixty (60)-Day cure period, the Defaulting Party shall have additional time to cure the default if it commences to cure the default within such sixty (60)-Day cure period, it diligently pursues such cure, and such default is capable of being cured by the Defaulting Party and is in fact cured within no more than one hundred eighty (180) Days after receiving such notice; provided, further, that the Defaulting Party shall not be relieved of its duty to pay amounts due under this Agreement during the cure period, whether the amount due arises from the Event of Default or otherwise;

(c) is subject to any involuntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding (whether under any present or future statute, law, or regulation), including the involuntary appointment of any trustee, receiver, custodian, or the like of such Defaulting Party or all or any substantial part of its assets, and such proceeding has not been terminated or dismissed within thirty (30) Days after the commencement thereof; commences any voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation), including the appointment, with the consent or acquiescence of the Defaulting Party, of any trustee, receiver, custodian, or the like of such Defaulting Party or all or any substantial part of its assets; or Seller Guarantor commences or is subject to any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to Seller Guarantor (in which event Seller

shall be deemed to be the Defaulting Party), the provider of any Letter of Credit given pursuant to Section 6.3.3 (in which event Seller shall be deemed to be the Defaulting Party), unless the guaranty or Letter of Credit provided by such Person is replaced in form and substance and by an entity satisfactory to the non-defaulting Party within five (5) Business Days after the commencement of such proceeding;

(d) Seller Guarantor defaults under the guaranty issued by Seller Guarantor hereunder, in which event Seller shall be deemed to be the Defaulting Party;

(e) breaches Section 6.3.3; or

(f) breaches Article 7,

such failure, default or breach by the Defaulting Party described above shall be deemed to be an "**Event of Default**" under this Agreement.

Notwithstanding anything expressed or implied herein to the contrary:

(i) upon the occurrence of an Event of Default by Seller, Purchaser shall give any notice of such Event of Default to each of the Default Notice Parties; provided, that Purchaser shall only be required to give such notice to Seller Lender if, prior to the occurrence of such default, Seller or Seller Lender has provided to Purchaser written notice of the address, telephone number and fax number to which notices to Seller Lender are to be sent;

(ii) upon the occurrence of an Event of Default by Purchaser, Seller shall give any notice of such Event of Default to each of the Default Notice Parties.

12.1.2 Rights Upon Event of Default. Upon the occurrence of an Event of Default by a Defaulting Party and after any cure period applicable to such Event of Default as provided in Section 12.1.1, the non-defaulting Party shall have the following rights, which rights the non-defaulting party may exercise individually or in any combination:

(a) to terminate this Agreement by written notice to the Defaulting Party and to recover in connection with such termination its Cost to Cover pursuant to Section 7.1 and based on the remainder of the Term;

(b) to suspend performance of its obligations and duties hereunder upon written notice to the Defaulting Party;

(c) if the non-defaulting Party is Purchaser, to exercise all rights as a secured party under the Security Documents, including: (i) the right to foreclose on the security interests granted therein, or any portion thereof, and apply the net

proceeds resulting therefrom against Purchaser's Cost to Cover and (ii) enter into possession of the Project and operate and maintain the Project for the account, and at the expense, of Seller, including producing and delivering Energy to Purchaser in accordance with the terms of this Agreement; and

(d) to pursue any other right or remedy under this Agreement or now or hereafter existing at law, in equity or otherwise.

12.2 Specific Performance and Injunctive Relief. Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties agree that specific performance is proper in the event of any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance agree that all expenses incurred by the prevailing Party in such proceeding, including reasonable attorneys' fees at trial and upon appeal, shall be awarded to the prevailing Party in such proceeding.

ARTICLE 13 LIMITATION OF LIABILITY

EXCEPT TO THE EXTENT INCLUDED IN THE COST TO COVER OR OTHER AMOUNTS SPECIFICALLY PROVIDED HEREIN TO BE PAID, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR IN EQUITY. IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT ANY AMOUNTS OWING BY SELLER TO PURCHASER PURSUANT TO SECTIONS 6.3 AND 7.3 HEREOF ARE NOT INTENDED, NOR SHALL THEY BE INTERPRETED OR CONSTRUED, TO CONSTITUTE SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES FOR PURPOSES OF THIS ARTICLE 13.

ARTICLE 14 CONSENT TO JURISDICTION

Any disputes arising out of, in connection with, or with respect to this Agreement, the subject matter hereof, or the performance or nonperformance of any obligation hereunder shall be adjudicated in a state or federal court of competent civil jurisdiction sitting in the State of Washington and nowhere else. Each of the Parties irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the state or federal courts located in King County, State of Washington, and that, by execution and delivery of this Agreement, each Party:

(a) accepts the exclusive jurisdiction of the aforesaid courts;

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

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

(d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its notice address set forth herein, or at such other address of which the other Parties hereto shall have been notified, and

(e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Applicable Law.

ARTICLE 15 ASSIGNMENT

15.1 Restriction on Assignments. Except as otherwise provided below, neither Party may assign or transfer this Agreement, or any of its rights, title or interests herein, hereto or hereunder, and Seller shall not assign or transfer any of its rights, title or interests in or to the Project or any part thereof (either directly or through the transfer of interests in Seller), without the other Party's prior written consent, which consent shall not be unreasonably withheld. The non-assigning Party may withhold its consent (without limitation) if the other Party proposes to assign or transfer its rights or delegate its duties under this Agreement to any party that has a credit rating by S&P of "BBB+" or less or has a credit rating by Moody's of "Baa1" or less. [Purchaser may, without the consent of Seller, sell, transfer, assign, convey, encumber or otherwise dispose of all or any portion of the Environmental Attributes.] Any assignment in violation of this provision shall be void.

15.2 Assumption by Assignee; No Release from Liabilities. Seller shall cause any permitted assignee or transferee of Seller's interests in, to or under this Agreement to assume all existing and future obligations of Seller to be performed under this Agreement. Upon any permitted assignment or transfer of this Agreement, the assigning or transferring Party shall nevertheless continue to be and shall remain liable for the performance of its obligations hereunder in accordance with the terms hereof.

15.3 Binding Effect. Subject to the other provisions of this Article 15, this Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns.

15.4 Purchaser's Options

15.4.1 Purchaser shall have an option (the "**Transfer Option**") to purchase all of the interests that are the subject of any proposed assignment or transfer permitted under this Article 15 on terms not less advantageous to Seller or Purchaser than those that Seller is willing to accept from the proposed transferee. The Transfer Option shall be exercisable at any time within sixty (60) Days after Purchaser receives written notice of the Transfer Option (the "**Transfer Option Notice**") from Seller. The Transfer Option Notice shall contain (a) a clear and concise statement that it is an offer to sell to Purchaser the interests in the Project that are the subject of the proposed assignment or transfer, (b) a description of the proposed assignment or transfer, (c) the name and address of the prospective transferee, (d) all of the terms of the proposed assignment or transfer (including, but not limited to, the purchase price and terms of payment), and (e) a representation, warranty and covenant that no other assignment or transfer is being considered by Seller as of the date of the Transfer Option Notice and that no other assignment or transfer shall be considered or effected by Seller until the six-month period referred to below in this Section 15.4.1 has elapsed. Seller shall give the Transfer Option Notice at least sixty (60) Days in advance of the proposed date of the proposed assignment or transfer. Purchaser shall have the right to exercise the Transfer Option by giving Seller written notice of such exercise within the applicable sixty (60)-Day period. If the Transfer Option is not exercised in accordance with this Section 15.4.1, Seller may assign or transfer the specified interests to the prospective transferee named in the Transfer Option Notice, provided that such assignment or transfer is made in strict accordance with the terms of the proposed assignment or transfer set forth in the Transfer Option Notice and is completed within six (6) months after the expiration of the right to exercise the Transfer Option. After such six-month period has elapsed, any assignment or transfer by Seller shall again be subject to the restrictions on assignment set forth in this article and to the Transfer Option.

15.4.2 Purchaser shall have an option (the "**Power Purchase Option**") for a period of five (5) years after the end of the Term to purchase all of the net electrical output from the Project that is the subject of any proposed sale of such output on the same terms as those which Seller is willing to accept from the proposed purchaser of such output. The Power Purchase Option shall be exercisable at any time within sixty (60) Days after Purchaser receives written notice of the Power Purchase Option (the "**Power Purchase Option Notice**") from Seller. The Power Purchase Option Notice shall contain (i) a clear and concise statement that it is an offer to sell to Purchaser all of the net electrical output from the Project that is the subject of any proposed sale of such output, (ii) a description of the proposed purchase and sale, (iii) the name and address of the prospective purchaser, (iv) all of the terms of the proposed purchase and sale of such output (including, but not limited to, the purchase price and terms of payment), and (v) a representation, warranty and covenant that no other purchase and sale of such output is being considered by Seller as of the date of the Power Purchase Option Notice and that no other purchase and sale of such output shall be considered or effected by Seller until the six-month period referred to below in this Section 15.4.2 has elapsed. Seller shall give the Power Purchase Option Notice at least sixty (60) Days in advance of the proposed date of the proposed purchase and sale transaction. Purchaser shall have the right to exercise the Power Purchase Option by giving Seller written

notice of such exercise within the applicable sixty (60)-Day period. If the Power Purchase Option is not exercised in accordance with this Section 15.4.2, Seller may sell such output to the prospective purchaser named in the Power Purchase Option Notice, provided that such purchase and sale is made in strict accordance with the terms set forth in the Power Purchase Option Notice and is completed within six (6) months after the expiration of the right to exercise the Power Purchase Option. After such six-month period has elapsed, any purchase and sale of such output by Seller shall again be subject to the Power Purchase Option.

15.5 Purchase Pursuant to Options

15.5.1 If the Transfer Option is exercised in accordance with Section 15.4.1, Purchaser shall purchase from Seller, and Seller shall sell and transfer to Purchaser, the interests in the Project specified in the Transfer Option Notice in accordance with the terms of the proposed assignment or transfer set forth in the Transfer Option Notice. If the terms of the proposed assignment or transfer include consideration other than money, Purchaser shall have the right to substitute for such consideration the monetary equivalent thereof. If the Parties cannot agree upon such monetary equivalent, then the monetary equivalent shall be determined by appraisal. In such event, the Parties shall select an appraiser who shall, within sixty (60) Days after his appointment, determine the monetary equivalent of the nonmonetary consideration. If the Parties cannot agree upon an appraiser within sixty (60) Days after the exercise of the Transfer Option, then the Parties shall, within ten (10) Days thereafter, each select an appraiser and the two appraisers so selected shall, within thirty (30) Days after their selection, select a third appraiser. If the two appraisers cannot agree upon a third appraiser, then either Party may petition the American Arbitration Association to appoint a third appraiser. Within sixty (60) Days after the appointment of the last of the appraisers to be appointed, the three appraisers shall determine by majority vote the monetary equivalent of the nonmonetary consideration.

15.5.2 If the Power Purchase Option is exercised in accordance with Section 15.4.2, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the net electrical output from the Project specified in the Power Purchase Option Notice in accordance with the terms set forth in the Power Purchase Option Notice.

15.6 Closing. Unless otherwise agreed by the Parties, the closing of any sale pursuant to the exercise of a Transfer Option or Power Purchase Option shall take place at the principal office of Purchaser on the first regular business Day following a period of sixty (60) Days after the determination of the terms of such transfer or sale in accordance with Sections 15.4 and 15.5.

15.7 Survival. Sections 15.4, 15.5 and 15.6 (and the Transfer Option and the Power Purchase Option) shall survive the expiration of the Term.

ARTICLE 16 FINANCING LIENS

Seller, without the consent of Purchaser, may grant a security interest in its interests in, to and under this Agreement to Seller Lender as security for any loan made for the purpose of financing or refinancing the construction and/or operation of the Project and the Interconnection Facilities. [Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to Seller Lender.] Promptly after granting such security interest, Seller shall notify Purchaser in writing of the name, address, and telephone and facsimile numbers of each Seller Lender to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of Seller Lender to whom all written and telephonic communications are to be addressed. After giving Purchaser such initial notice, Seller shall promptly give Purchaser notice of any change in the information provided in the initial notice or any revised notice.

If Seller encumbers its interest under this Agreement as permitted by this Article 16, the following provisions shall apply:

(a) Seller Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller, and such act performed by Seller Lender shall be as effective to prevent or cure an Event of Default as if done by Seller.

(b) Purchaser shall give Seller Lenders notice of, and the opportunity to cure as provided in clause (a) above, any breach or default of this Agreement by Seller.

(c) if the Seller Lender forecloses or takes a deed in lieu of foreclosure, (i) Purchaser shall, at Lender's request, continue to perform all of its obligations hereunder, and Seller Lender or its nominee may perform in the place of Seller; provided, that to the extent that Seller Lender or its nominee exercises any right under this Agreement, the terms and conditions of this Agreement shall apply to and be binding upon Seller Lender to the same extent as Seller, (ii) Purchaser shall accept performance in accordance with this Agreement by Seller Lender or its nominee and (iii) Purchaser shall make representations to Seller Lender as set forth in Section 17.2.

(d) Upon the receipt of a written request from Seller or any Seller Lender, Purchaser shall execute or arrange for the delivery of such certificates, consents, opinions, and other documents as may be reasonably required by Seller Lender for Seller to consummate any financing or refinancing of the Project or any part thereof; provided, however, that any such agreement shall not constitute a modification hereof unless Purchaser, in its sole discretion, otherwise so agrees in writing.

ARTICLE 17
REPRESENTATIONS, COVENANTS, AND WARRANTIES

17.1 Seller's Representations and Warranties. Seller represents and warrants throughout the Term as follows:

(a) Seller is a [corporation][limited liability company], duly organized and validly existing and is currently active under the laws of the state of Washington.

(b) Seller has the power and authority to enter into and perform this Agreement and the Security Documents and is not prohibited from entering into this Agreement or the Security Documents or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement or the Security Documents, except where such failure does not have a material adverse effect on Seller's performance under this Agreement or the Security Documents.

(c) Seller has obtained, or will obtain prior to commencement of deliveries of Test Power hereunder, all regulatory approvals required by any governmental authority, whether federal, state or local, in order to perform its obligations hereunder and under the Security Documents.

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

(e) Seller has no reason to believe that the Construction Permits and Operational Permits will not be obtained in the ordinary course of business.

(f) Seller has taken all such action necessary to authorize the execution and delivery of, and the performance by Seller of its obligations under, this Agreement and the Security Documents.

(g) [THIS SECTION 17.1(g) IS APPLICABLE ONLY TO QUALIFYING FACILITIES] the Project is a "qualifying small power production facility" or a "qualifying cogeneration facility" within the meaning of

Section 3(17)(C) or 3(18)(B), respectively, of the Federal Power Act, as amended by Section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA), and pursuant to notice filed with FERC under 18 C.F.R. Section 292.207(a), Seller has certified that the Project is a "qualifying facility" within the meaning of 18 C.F.R. Section 292.101(b)(1); the representations and statements set forth in such certification are true, accurate and complete as the date of the certification and the date of this Agreement; and such certification has not been revoked, terminated or cancelled and is in full force and effect on the date of this Agreement.

(h) Seller owns, will own or has all rights necessary to produce and sell to Purchaser the Energy using the Turbines and the Balance of Plant as contemplated by this Agreement free from any claim of infringement, misappropriation or violation of the rights of others;

(i) [THIS SECTION 17.1(g) IS APPLICABLE ONLY TO QUALIFYING FACILITIES] Seller shall furnish Purchaser with such documentation and information as Purchaser may request to verify Seller's representations and warranties set forth in (g) above (including, but not limited to, copies of the application and certification referred to in (g) above, together with copies of any correspondence or other communication to or from FERC).

17.2 Purchaser's Representations and Warranties. Purchaser represents and warrants throughout the Term as follows:

(a) Purchaser is a corporation duly organized, validly existing, and is currently active under the laws of the State of Washington, authorized to conduct business in each jurisdiction where necessary for the conduct of its business, except where such failure does not have a material adverse effect on Purchaser's performance under this Agreement.

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

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

is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing.

(d) Purchaser has taken all such action necessary or advisable to authorize the execution and delivery of, and the performance by Purchaser of its obligations under, this Agreement.

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

ARTICLE 18 MISCELLANEOUS

18.1 Liquidated Damages. With respect to any provisions herein providing for the payment of liquidated damages by Seller to Purchaser, the Parties acknowledge and agree that it is extremely impractical and difficult to assess actual damages in the event that Seller fails to perform under such provisions, and Seller therefore agrees that each method of calculating liquidated damages (including the Cost to Cover) as provided in such provisions is a fair and reasonable calculation of actual damages to Purchaser in the event that Seller fails to perform under such Sections 6.3, 7.1, 7.2 and 7.3.

18.2 Severability. The invalidity, in whole or in part, of any of the articles or section of this Agreement shall not affect the validity of the remainder of such articles or sections.

18.3 Amendment. No modification, amendment, or other change to this Agreement shall be effective unless agreed to in writing by each of the Parties.

18.4 No Waiver. Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies in that or any other instance. No Party shall be deemed to have waived any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

18.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed to constitute one and the same instrument.

18.6 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and this Agreement is not intended to impart any rights enforceable by any Person that is not a Party. No review, approval, consent, advice, recommendation, authorization, notice, inspection, test or other act by a Party regarding the construction, ownership, operation, use, or maintenance of the Project or the delivery of Energy under this

Agreement shall constitute or be interpreted as or be relied upon by any other Person not a Party as a warranty, representation, or endorsement by such Party.

18.7 Time. Unless otherwise specified in this Agreement, all references to specific times under this Agreement shall be references to Pacific standard or Pacific daylight savings time, whichever is then prevailing.

18.8 Headings, Captions; Construction; Conflict Between Agreement and Exhibits. All indexes, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning, content or scope of this Agreement. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof. Because both Parties have participated in the drafting of this Agreement, the usual rule of contract construction that resolves ambiguities against the drafter shall not apply.

18.9 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions consummated under this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Seller is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

18.10 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington, without regard to such state's choice of law principles.

18.11 No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship, franchise or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act as or be an agent or representative of, or otherwise to bind the other Party.

18.12 Waiver of Jury Trial. Each of the Parties knowingly, voluntarily, and intentionally waives the right it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with this Agreement and any agreement contemplated hereunder, or any course of conduct, course of dealing, statements (whether verbal or written), or actions of the Parties. Furthermore, each of the Parties waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. This provision is a material inducement for the Parties to enter into this Agreement.

18.13 Effect of Force Majeure Event. Notwithstanding any other provision of this Agreement, each Party's obligations under this Agreement shall be suspended by a Force Majeure Event but only to the extent that the Force Majeure Event prevents the affected Party from performing its obligations under this Agreement. The affected Party's time for performance shall be extended by a period of time reasonably necessary to compensate for

the delay caused by the Force Majeure Event; provided, that the affected Party shall use diligent efforts to remedy or overcome the Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments required to be made hereunder.

18.14 Rights and Remedies Cumulative. Except as otherwise expressly provided in this Agreement, all rights and remedies of either Party under this Agreement and at law and in equity shall be cumulative and not mutually exclusive and the exercise of one right or remedy shall not be deemed a waiver of any other right or remedy. Nothing contained in any provision of this Agreement shall be construed to limit or exclude any right or remedy of either Party (arising on account of the breach or default by the other Party or otherwise) now or hereafter existing under any other provision of this Agreement, at law or in equity.

18.15 Governmental Authority. This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities (including the WUTC and FERC) having jurisdiction over the Project, this Agreement, the Parties or either of them. Upon execution of this Agreement, Purchaser shall submit this Agreement to the WUTC for review and shall subsequently notify Seller as to whether, within thirty (30) Days following such submission, the WUTC has raised any issues with respect to this Agreement. If (a) the WUTC raises any issues with respect to this Agreement, and (b) Purchaser does not, within one hundred twenty (120) Days following the submission of this Agreement to the WUTC for review, otherwise notify Seller in writing that this Agreement is effective, then either Party shall have the right to terminate this Agreement by giving the other Party written notice of such termination, whereupon this Agreement shall be void *ab initio* and of no force or effect. In no event shall either Party incur any liability (whether for lost revenue or lost profits or otherwise) as a result of such termination. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

18.16 Entire Agreement. This Agreement (including the attached Exhibits, which are incorporated by this reference) and all amendments to this Agreement contain the complete Agreement between Seller and Purchaser with respect to the matters contained in this Agreement and supersede all other agreements and understandings, whether written or oral, with respect to the matters contained in this Agreement.

In Witness Whereof, the Parties have caused this Agreement to be executed and delivered as of the date first set forth above.

PUGET SOUND ENERGY, INC.
a Washington corporation

By: _____
Name: _____
Title: _____
Date: _____

[Insert Name of Seller]
a [_____]

By: _____
Name: _____
Title: _____
Date: _____

EXHIBITS

EXHIBIT A-1	Project Description
EXHIBIT A-2	Site Description
EXHIBIT B	Description of Generator
EXHIBIT C	Location of Delivery Point and Project Substation
EXHIBIT D	Description of the Permits
EXHIBIT E	Contract Rate and Renewal Rate
EXHIBIT F	Example of Calculation of Excess Output Payment under Section 5.1.2
EXHIBIT G	Form of Guaranty of Seller Guarantor
EXHIBIT H	Form of Generator Final Completion Certificate
EXHIBIT I	Operating Procedures and Coordination
EXHIBIT J	Termination Amounts

EXHIBIT A-1
PROJECT DESCRIPTION

EXHIBIT A-2
SITE DESCRIPTION

EXHIBIT B
DESCRIPTION OF GENERATORS

EXHIBIT C

LOCATION OF DELIVERY POINT AND PROJECT SUBSTATION

This Exhibit C is to be completed following the execution and delivery of this agreement as provided in Section 2.1 hereof.

EXHIBIT D
DESCRIPTION OF THE PERMITS

EXHIBIT E

**Contract Capacity
Rate
(\$ per MW)**

**Contract Energy
Rate
(\$ per MWh)**

**Renewal Capacity
Rate
(\$ per MW)**

**Renewal Energy
Rate
(\$ per MWh)**

EXHIBIT F

EXAMPLE OF CALCULATION OF EXCESS OUTPUT CREDIT

UNDER SECTION 5.1.2

The sample calculation set forth below is based on the following assumed facts:

(1) Contract Year in which the total Energy delivered or deemed delivered to Purchaser Under this Agreement was [150] MWhs.

(2) The annual Mean Project Output equals [100] MWh. 110% of the Mean Project Output for the Contract Year in reference equals [110] MWh (100 MWh times 1.10).

(3) The Excess Output for the Contract Year in question equals [40] MWh (150 MWh of Energy delivered or deemed delivered during the Contract Year in reference , minus 110 MWh [being 110% of the Mean Project Output for the Excess Output Calculation Period in question]).

(4) The Excess Output Credit Rate for the Contract Year in reference shall be as set forth in the definition thereof.

Given the above assumed facts, the Excess Output Payment for the Contract Year in reference would be calculated as follows:

$$\text{Excess Output} = 150 - [100 * 110\%] = 40 \text{ MWhs}$$

$$\text{Excess Output Credit} = [40] * [\text{Contract Rate or Renewal Rate, as applicable}] * 15\%$$

EXHIBIT G

FORM OF GUARANTY OF SELLER GUARANTOR

[Form to be provided.]

EXHIBIT H

FORM OF GENERATOR FINAL COMPLETION CERTIFICATE

GENERATOR FINAL COMPLETION CERTIFICATE

DATE OF ISSUANCE _____

OWNER: _____

CONTRACTOR: _____

Project: _____

OWNER's Contract No. _____ CONTRACTOR's Project No. _____

Capitalized terms used herein shall have the meaning set forth in the _____ Power Purchase Agreement dated _____, 2003, between _____, as Seller, and Puget Sound Energy, Inc., as Purchaser.

_____, as Contractor under that certain *[insert description of Contract]* hereby certifies that Generator Completion for all _____ Generator has been achieved.

Executed by Contractor on _____

Date

_____, as Contractor

By: _____
(Authorized Signature)

_____, as Seller and owner of the Project, hereby concurs in Contractor's certification as set forth above and accepts this Generator Final Completion Certificate.

_____, as
Seller and owner of the Project

By: _____
(Authorized Signature)

Date: _____

EXHIBIT I

OPERATING PROCEDURES AND COORDINATION

The Parties hereby agree as follows:

1. Definitions

All capitalized terms not specifically defined below shall have the meaning as set forth in this Agreement, unless the specific application clearly indicates a different meaning.

1.1 "Dispatchers(s)" means Purchaser's representative or representatives responsible for monitoring and operating Purchaser's electric resources.

1.2 "Immediate Outage" means the occurrence of an immediate reduction or suspension of the electrical output from any Generator in response to an abnormal operating condition. An Immediate Outage is distinguished from an Unplanned Required Outage in that the abnormal condition causing an Immediate Outage requires prompt shutdown or curtailment of one or more Generator.

1.3 "Scheduled Maintenance" means the occurrence of reduced or suspended Project or Generator operation for the purpose of performing routine or regular maintenance to the Project in accordance with Prudent Utility Practices. Scheduled Maintenance is distinguished from Immediate Outages and Unplanned Required Outages in that the duration and timing of Scheduled Maintenance can be reasonably forecast.

1.4 "Scheduler(s)" means Purchaser's representative or representatives responsible for day-to-day resource planning and scheduling.

1.5 "Unplanned Required Outage" means the occurrence of reduced or suspended Project or Generator operation caused by abnormal operating conditions that require corrective action. An Unplanned Required Outage is distinguished from an Immediate Outage in that the required repair or maintenance for an Unplanned Required Outage can be delayed or scheduled.

2. Designation of Operating Representatives

2.1 Purchaser shall notify Seller of designated Dispatchers and Schedulers. Seller shall notify Purchaser of designated Operators. The Dispatchers, Schedulers, and Operators so designated shall be authorized to administer the terms of this **Exhibit I**. Each Party shall notify the other of any changes to operating representatives.

2.2 Each Party shall maintain a 24-hour telephone number that can be used to contact operating representatives designated under this **Exhibit I**. Each Party shall notify the other of any changes to the telephone number.

3. Notification

Notification under this **Exhibit I** shall be by telephone or facsimile unless explicitly stated otherwise for a particular application. Prior notification of an event or situation to be made by Seller to Dispatcher or Scheduler pursuant to this **Exhibit I** shall be given to Dispatcher or Scheduler, respectively, a reasonable amount of time in advance of such event or situation.

4. Outages

4.1 Scheduled Maintenance

(a) **Submittal of Proposed Scheduled Maintenance.** At least sixty (60) Days prior to the commencement of each Year, Seller shall submit to Purchaser in writing a proposed forecast of Scheduled Maintenance for such Year and the six months immediately following such Year. In such proposed forecast, Seller shall endeavor to confine Scheduled Maintenance to the months of May and June. Such proposed forecast shall set forth the reason, timing, expected duration, and impact upon project output, and the scheduling flexibility of each Scheduled Maintenance.

(b) **Review of Proposed Scheduled Maintenance.** Purchaser shall have thirty (30) Days to review the proposed forecast of Scheduled Maintenance. Following this review, Purchaser may submit in writing to Seller comments and suggested starting dates for Scheduled Maintenance.

(c) **Final Forecast of Scheduled Maintenance.** Following good faith consideration of Purchaser's suggested timing of Scheduled Maintenance, Seller shall establish the final forecast of Scheduled Maintenance and send such written forecast to Purchaser prior to the commencement of the Year. Such final forecast shall confine Scheduled Maintenance to the months of May and June, unless Purchaser reasonably requests otherwise pursuant to (b) above and Seller agrees to such request, such agreement not to be unreasonably withheld.

(d) **Updates to Forecast.** Seller shall notify Purchaser of any change to the Scheduled Maintenance forecast as soon as practicable.

(e) **Notification to Purchaser.** Not less than seven (7) Days prior to a Scheduled Maintenance, Seller shall notify the Scheduler of the timing, expected duration and the impact upon the Project output. Prior to reducing the Project output for a Scheduled Maintenance, Seller shall notify the Dispatcher of the latest information regarding the timing, the rate at which the Project will be removed, or ramped down, from service, expected duration and the impact upon Project output. During the Scheduled Maintenance, Seller shall notify the Dispatcher of any changes to the expected duration of the Scheduled Maintenance outage as soon as practicable.

(f) **Start-up.** Seller shall notify the Dispatcher prior to returning the Project to service following a Scheduled Maintenance outage. Such notification shall include the timing of the start-up and the rate at which the Project will be returned, or ramped up, to service.

4.2 **Unplanned Required Outage**

(a) **Notification to Purchaser.** Upon the occurrence of an event necessitating an Unplanned Required Outage, Seller shall notify the Scheduler of the reason, timing, expected duration, the impact upon Project output, and the scheduling flexibility of each Unplanned Required Outage. The Scheduler and Seller shall agree upon a schedule for the Unplanned Required Outage, which schedule shall minimize the impact upon Purchaser's electric system and Project operations. If the Scheduler and Seller cannot agree, Seller shall schedule the Unplanned Required Outage and give the Scheduler and Dispatcher prior notice of such schedule. Unless otherwise agreed to by Seller and Scheduler, Seller shall use reasonable efforts to confine all Unplanned Required Outages to weekends, holidays, and, to the extent necessary, non-holiday weekdays other than between the hours of 7 a.m. to 10 a.m. and 4 p.m. to 7 p.m. local time.

(b) **Updates.** During the Unplanned Required Outage, Seller shall notify the Dispatcher of any changes to the expected duration of the outage as they become known.

(c) **Start-up.** Seller shall not return the Project to service following a full or partial shutdown without prior notice to Dispatcher. Such notification shall include the timing of the start-up and the ramp up rate of that portion of the Project returning to service.

4.3 **Immediate Outage**

(a) **Notification to Purchaser.** As soon as practicable after the occurrence of an Immediate Outage, Seller shall notify the Dispatcher, to the extent information is available, of the reason, timing, expected duration and the impact upon Project output of each Immediate Outage.

(b) **Updates.** During an extended Immediate Outage, Seller shall notify the Dispatcher of any changes to the expected duration of the outage as they become known.

(c) **Start-up.** Seller shall notify the Dispatcher prior to returning the Project to service following an Immediate Outage. Such notification shall include the timing of the start-up and the ramp up rate of that portion of the Project returning to service. In the event Seller is able to initiate an immediate restart following an

Immediate Outage, Seller shall notify Dispatcher of the above information as soon as practicable.

4.4 Outage Reports

Purchaser may from time-to-time request, and Seller shall provide, a report of the cause of any Project outage and the actions taken by Seller to correct the situation.

EXHIBIT J

TERMINATION AMOUNTS

Contract Year

Termination Amount