

**EXH. CLS-9C  
DOCKET UE-20\_\_\_\_  
2020 PSE PCORC  
WITNESS: CINDY L. SONG**

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**PUGET SOUND ENERGY,**

**Respondent**

**Docket UE-20\_\_\_\_**

**EIGHTH EXHIBIT (CONFIDENTIAL) TO THE  
PREFILED DIRECT TESTIMONY OF**

**CINDY L. SONG**

**ON BEHALF OF PUGET SOUND ENERGY**

**REDACTED  
VERSION**

**DECEMBER 9, 2020**

**POWER PURCHASE AGREEMENT**

**between**

**PUGET SOUND ENERGY, INC.**

**as Purchaser**

**and**

**SIERRA PACIFIC INDUSTRIES**

**as Seller**

**dated as of**

**January 27, 2020**

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## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this “Agreement”) is made this 27<sup>th</sup> day of January, 2020 (the “Effective Date”), by and between Puget Sound Energy, Inc., a Washington corporation (“Purchaser”), and Sierra Pacific Industries, a California corporation (“Seller”). Purchaser and Seller are each individually referred to herein as a “Party” and collectively as the “Parties”.

### WITNESSETH:

WHEREAS, Seller owns and operates a biomass fueled cogeneration generation facility with a nameplate capacity of twenty-eight (28) MW<sub>AC</sub> on a site located in Skagit County, Washington; and

WHEREAS, Seller desires to sell, and Purchaser desires to purchase and receive, the Delivered Energy and Attributes from the Facility on the terms and conditions set forth herein.

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

### ARTICLE 1 GENERAL TERMS AND CONDITIONS

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

**1.2 Interpretation.**

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

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

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

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

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

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

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

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

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

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

(k) References to “or” will be deemed to be disjunctive but not necessarily exclusive (*i.e.*, unless the context dictates otherwise, “or” will be interpreted to mean “and/or” rather than “either/or”);

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

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

## **ARTICLE 2**

### **SALE AND PURCHASE OF ENERGY; OPERATION**

#### ***2.1 Purchase and Sale.***

(a) In accordance with the terms and conditions hereof, commencing on the Delivery Term Start Date and continuing during each hour through the remainder of the Term, Seller shall sell and deliver to Purchaser at the Delivery Point and Purchaser shall purchase and



accept from Seller at the Delivery Point all Net Electrical Output from the Facility together with all Attributes associated therewith; provided, however, that in no event shall Seller deliver, nor shall Purchaser be obligated to accept, Energy in excess of that generated by the Contract Capacity. All Energy delivered to the Delivery Point from the Contract Capacity is referred to herein as “Delivered Energy”.

(b) In no event shall Seller have the right (i) to procure any element of the Delivered Energy or Attributes from sources other than the Facility for sale or delivery to Purchaser under this Agreement, or (ii) except for in accordance with Section 2.3(c), sell Energy or Attributes from the Facility to any other person.

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

## **2.2 Contract Rate.**

(a) Purchaser shall pay Seller an amount equal to the applicable Contract Rate set forth in Exhibit A multiplied by each MWh of Delivered Energy (rounded to the third decimal point) during the period from and including the Delivery Term Start Date and continuing throughout the Term. The Contract Rate shall not be subject to adjustment on account of any tariff, regulatory, market or other similar changes. For sake of clarity, except as provided in Section 2.2(c) below with respect to Washington State and Local Taxes, as between the Parties, Seller shall be responsible for any and all costs or charges imposed on or allocated to Seller or the Facility by any Governmental Authority.

(b) Without limiting the right and obligation of Purchaser to buy Delivered Energy and Attributes from Seller in accordance with the provisions of this Agreement, this Agreement shall not be interpreted to create any ownership or proprietary rights in the Facility in favor of Purchaser, and Purchaser hereby disclaims any right, title or interest in any part of the Facility.

(c) In addition to the amounts otherwise payable by Purchaser in accordance with this Section 2.2, Purchaser and Seller agree that the sale of Energy is exempt from Washington State and Local Sales and Use Taxes pursuant to RCW 82.08.950 and the sale of Attributes is not subject to Washington State or Local Sales and Use Taxes. In the event the sale of Energy or Attributes becomes subject to Washington State or Local Sales and Use Taxes, Purchaser shall pay (and shall indemnify and hold harmless Seller on an After-Tax Basis from and against) any and all Washington State or Local Sales and Use Taxes arising out of or with respect to the purchase or sale of Delivered Energy or Attributes that are imposed by any taxing authority at or after the Delivery Point (regardless of whether such Washington State or Local Sales and Use Taxes are imposed on Purchaser or Seller), together with any interest, penalties or additions to tax

payable with respect to such Washington State or Local Sales and Use Taxes. Seller shall pay (and shall indemnify and hold Purchaser harmless on an After-Tax Basis from and against) all other taxes, including taxes arising out of or with respect to the purchase or sale of Delivered Energy or Attributes that are imposed by any taxing authority prior to the Delivery Point, taxes based on or measured by net income, business and occupation taxes, property taxes, replacement taxes or special assessments that may be levied upon the Facility as well as state or local sales taxes applicable to the construction, maintenance, repair or operation of the Facility, together with any interest, penalties or additions to tax payable with respect thereto.

### **2.3 *Attributes and Incentives***

(a) Purchaser shall be entitled to, for no additional consideration, all Attributes, regardless of when such Attributes may come into existence or be acquired by Seller. Seller will use commercially reasonable efforts, including complying with all applicable registration and reporting requirements, and executing any and all documents or instruments reasonably necessary to cause the Facility to qualify for all applicable Attributes available throughout the Term of this Agreement, at Seller's cost and expense. Seller shall make such filings and take such other actions as Purchaser may from time to time reasonably request in order to preserve and maintain the Attributes made available to Purchaser hereunder in accordance with the applicable standards and to otherwise enable Purchaser to use, sell and transfer such Attributes in accordance with market standards.

(b) Seller shall, at Seller's sole cost and expense, take all necessary steps and actions prior to the Delivery Term Start Date to allow the Generation Attributes that will be transferred to Purchaser pursuant to this Agreement to be tracked in WREGIS. Seller shall, at Seller's sole cost and expense, register the Facility in WREGIS as an eligible renewable resource for Washington and California. Commencing on the Delivery Term Start Date and continuing through the end of the Term, Seller shall, at Seller's sole cost and expense, comply with all applicable WREGIS operating rules and maintain its registration in WREGIS for the Facility. During the Delivery Term, Seller shall, at Seller's sole cost and expense, deliver and convey the Attributes associated with the Delivered Energy delivered to Purchaser within ten (10) Business Days after the end of the month in which the WREGIS certificates for such Attributes are created. In the event that during the Term WREGIS is not available as a means for transferring any of the Attributes to Purchaser, Seller shall (i) arrange for an alternative mutually acceptable method of assigning to Purchaser all rights and authority necessary for Purchaser to register, hold, and manage such Attributes in Purchaser's own name and for Purchaser's account and (ii) execute and deliver to Purchaser on a quarterly basis the attestation form attached hereto as ExhibitB ("Attestation Form") or such other documentation as may be required verifying the assignment of the Attributes to Purchaser pursuant to this Agreement.

(c) In the event of a change in Applicable Law which prevents Seller from assigning Attributes to Purchaser notwithstanding the requirements hereof, if Seller realizes the monetary value of such Attributes from any source other than Purchaser under this Agreement,

Seller shall, within thirty (30) days of actual receipt, pay to Purchaser the amount that Seller actually receives (net of any costs, taxes or expenses Seller incurs to receive such amounts) as a result of its ownership of the applicable Attributes. Seller shall use commercially reasonable efforts to maximize the value received by Seller with respect to any such Attributes.

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

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

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

#### **2.4 *Purchaser Voluntary Curtailment.***

(a) Except as otherwise provided in this Section 2.4, in the event that Seller is required by a Purchaser Voluntary Curtailment to curtail energy deliveries from the Facility below the Scheduled Energy, Purchaser shall pay to Seller, as Seller's sole remedy, the applicable Contract Rate for any Deemed Energy attributable to such Purchaser Voluntary Curtailment. Seller shall provide Purchaser access to information reasonably necessary to verify Seller's determination of Deemed Energy for any applicable Purchaser Voluntary Curtailment. For sake of clarity, Purchaser shall be entitled to issue a Purchaser Voluntary Curtailment Order at any time during the months of May and June without any liability resulting therefrom. Purchaser shall not be entitled to issue a Purchaser Voluntary Curtailment Order at any time during the months of November, December, January or February. In no event shall Seller be required by any Purchaser Voluntary Curtailment to curtail deliveries below the Minimum Contract Capacity.

(b) Purchaser shall give Seller not less than two (2) hours' advance notice of any Purchaser Voluntary Curtailment, and Seller shall be permitted to commence ramping down the output of the Facility in the hour preceding the hour in which Purchaser has requested that such Purchaser Voluntary Curtailment commence. In addition, at the end of any such Purchaser Voluntary Curtailment, Seller shall have one (1) hour to ramp up the output of the Facility to the

Scheduled Energy. For sake of clarity, all amounts of Energy not delivered as a result of any of the foregoing ramping of the output of the Facility during the hour preceding and the hour following the requested period of the Purchaser Voluntary Curtailment shall be included in the calculation of Deemed Energy for such Purchaser Voluntary Curtailment. If Purchaser issues a Purchaser Voluntary Curtailment Order with less than three (3) hours' advance notice, and as a result thereof and notwithstanding Seller's reasonable efforts to avoid them, Seller incurs imbalance charges in order to comply with such Purchaser Voluntary Curtailment Order, then Purchaser shall indemnify Seller for the amount of any such imbalance charges.

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

(a) Seller shall calculate the amount of Delivered Energy (and Deemed Energy attributable to any Purchaser Voluntary Curtailment) hereunder following the last Day of each calendar month and on the last Day of the Term, if not the last Day of the month. No later than the tenth (10th) Day of each calendar month, Seller shall deliver to Purchaser an electronic invoice showing: (i) the amount of Delivered Energy delivered to the Delivery Point by Seller during the preceding calendar month (or in the case of the final year of the Term, the last calendar month or portion thereof of the Term), (ii) Seller's computation of the amount due Seller in respect thereof pursuant to Section 2.2(a), and (iii) any other amounts owed by one Party to the other Party pursuant to this Agreement, including pursuant to Section 2.13. Not more than twenty (20) Days after receipt of each timely delivered invoice, Purchaser shall pay to Seller, by wire transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time, the undisputed amount set forth as due in such invoice.

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

(c) If Purchaser in good faith disputes an invoice, Purchaser shall provide Seller with a written explanation specifying in detail the basis for the dispute, and Purchaser shall pay the undisputed portion of the invoice in accordance with this Section 2.5. Following resolution of a payment dispute, any previously disputed charges or payments shall be due or creditable, as the case may be, on the date of issuance of the invoice for the next calendar month following resolution of the dispute and shall be deducted from or added to (as applicable) any sums due for such calendar month from the owing Party. Any payment not made by the date required by this

Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate equal to the Prime Rate then in effect plus one percent (1%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law (“Late Payment Rate”). If, as a result of a Dispute settled in favor of Purchaser, a refund is owed to Purchaser, then the amount of the overpayment shall bear interest from the date on which such payment was made by Purchaser through and including the date that the overpayment is refunded by Seller at an annual rate equal to the Late Payment Rate.

(d) Statements or invoices shall be sent to Purchaser by electronic mail to the electronic mail address designated in Section 10.4. Purchaser may change the electronic mail address by providing written notice to Seller.

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

**2.6 Title and Risk of Loss.** Title to and risk of loss with respect to Delivered Energy and Attributes delivered to Purchaser by Seller in accordance with this Agreement shall pass from Seller to Purchaser when the same are delivered by Seller for the benefit of Purchaser at the Delivery Point. Title and risk of loss with respect to Attributes that are not capable of being delivered to the Delivery Point (*e.g.*, renewable energy credits) shall pass from Seller to Purchaser when the same first come into existence. Until title passes, Seller shall be deemed in exclusive control of the same and shall be responsible for any damage or injury caused thereby. After title to the Delivered Energy or Attributes passes from Seller to Purchaser, Seller shall no longer be in control of same, shall have no further obligations with respect thereto, and shall not be responsible for any damage or injury caused thereby. Seller represents and warrants to Purchaser on a continuing basis that (i) it has not sold, pledged, assigned, transferred or otherwise disposed of, and will not sell, pledge, assign, transfer or otherwise dispose of, any of the Energy or Attributes to any Person other than Purchaser (subject to the provisions of Section 2.4 hereunder), and (ii) that it will deliver to Purchaser the Energy and Attributes free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person (other than any Person claiming through Purchaser) arising prior to the Delivery Point.

**2.7 Curtailment and Outages.**

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

- (i) For a Planned Outage;
- (ii) For a Forced Outage; or

(iii) In connection with a condition likely to result in significant damage to Seller's equipment or if Seller otherwise deems such curtailment necessary to protect life or property.

(b) Subject to Section 2.4, Seller shall curtail deliveries of Energy from the Facility as required pursuant to a Purchaser Voluntary Curtailment Order or System Curtailment Order, or as otherwise directed by a Transmission Provider or Balancing Authority.

(c) Seller may curtail deliveries of Energy in the event that Seller is unable to deliver such Energy due to a Force Majeure event but only for so long and only to the extent necessitated by such Force Majeure event.

(d) Seller may curtail deliveries of Energy as a result of a Seller Compliance Curtailment.

## **2.8 *Curtailment Notification Requirements.***

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

(b) Seller is responsible for securing any required Transmission Provider approvals for Planned Outages, including securing changes in its outage schedules when Transmission Provider disapproves Seller's schedules or cancels previously approved outages. Seller shall communicate any Transmission Provider-required changes to Purchaser in a timely manner.

(c) Seller shall notify Purchaser, via telephone to a number specified by Purchaser or by e-mail or other form acceptable to Purchaser, of any Forced Outage as soon as practicable, but not longer than fifteen (15) minutes after the occurrence thereof, and shall provide, to the extent information is available, notice of the reason, timing, and expected duration of the Forced Outage, and the impact of the Forced Outage on the Energy output of the Facility. No later than five (5) Business Days after the occurrence of a Forced Outage, Seller shall provide to Purchaser, in a form reasonably acceptable to Purchaser, a report of the Forced Outage, which shall include the cause of the outage, the duration (or expected duration) of the outage, the impact of the outage on the Facility and any remedial or corrective plans of Seller.

## **2.9 *Interconnection and Transmission.***

(a) Seller's Transmission Service Obligations. During the Delivery Term:

(i) Seller shall arrange and pay independently for any and all necessary electrical interconnection, distribution or transmission (and any regulatory approvals

required for the foregoing), sufficient to allow Seller to deliver the Delivered Energy to the Delivery Point pursuant to the terms of this Agreement.

(ii) Seller shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment to the Delivery Point.

(b) Purchaser's Transmission Service Obligations. During the Delivery Term:

(i) Purchaser shall arrange and be responsible for transmission service at and from the Delivery Point.

(ii) Purchaser shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment from the Delivery Point.

(iii) Purchaser shall be responsible for all Transmission Provider costs and charges, electric transmission losses and congestion at and from the Delivery Point.

(c) In the event that: (i) Transmission Provider takes any action or orders Purchaser or Seller to take any action (not arising from Seller's failure to comply with Applicable Law, Prudent Operating Practices or this Agreement) that affects Purchaser's ability to take delivery of Delivered Energy hereunder, then Purchaser shall use commercially reasonable efforts (at its own cost and expense) to mitigate the adverse effects of such action(s) on Purchaser's ability to perform its obligations hereunder, or (ii) Transmission Provider takes any action or orders Purchaser or Seller to take any action (not arising from Purchaser's failure to comply with Applicable Law, Prudent Operating Practices or this Agreement) that affects Seller's ability to deliver Scheduled Energy hereunder to the Delivery Point, then Seller shall use commercially reasonable efforts (at its own cost and expense) to mitigate the adverse effects of such action(s) on Seller's ability to perform its obligations hereunder. The Parties acknowledge that upon such order to curtail transmission service it may be difficult or impossible for the Parties to mitigate the adverse effects of such action(s).

## ***2.10 Scheduling; Imbalance Charges.***

(a) Scheduling; Imbalance Charges

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

Seller's good faith estimate of the actual quantity of Delivered Energy that Seller expects to be delivered to the Metering Point. Scheduling shall occur, consistent with applicable WECC or other power scheduling and protocols, on a prescheduled "day-ahead" basis.

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

(iii) The Parties shall use commercially reasonable efforts to minimize any imbalance charges.

(b) Scheduling Coordinator. The Parties agree that the Facility is not currently a PSE EIM Participating Resource, and that the Parties expect that the Facility will not be a PSE EIM Participating Resource at any time during the Delivery Term. Nonetheless, in the event that the Facility does become a PSE EIM Participating Resource at any time during the Delivery Term, Purchaser shall act as the Scheduling Coordinator for the Facility at no additional cost to Seller for such services. In that regard, Purchaser and Seller shall agree to the following:

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the beginning of the Delivery Term Seller shall take all actions and execute and deliver to Purchaser all documents necessary to authorize or designate Purchaser as Seller's Scheduling Coordinator, and Purchaser shall take all actions and execute and deliver to Seller and Transmission Provider all documents necessary to become and act as Seller's Scheduling Coordinator. If Purchaser designates a Third-Party Scheduling Coordinator, then Purchaser shall give Seller notice of such designation at least ten (10) Business Days before the Third Party Scheduling Coordinator assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third Party Scheduling Coordinator is appointed by Purchaser upon similar notice. Purchaser shall be fully responsible for all acts and omissions of Third Party Scheduling Coordinator and for all cost, charges and liabilities incurred by Third Party Scheduling Coordinator to the same extent that Purchaser would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Purchaser directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Delivery Term.



(ii) Purchaser's Responsibilities as Scheduling Coordinator. Purchaser or Third Party Scheduling Coordinator shall comply with all obligations as Seller's Scheduling Coordinator under the applicable OATT and shall conduct all scheduling in full compliance with the terms and conditions of this Agreement and the applicable OATT, all requirements of and protocols and scheduling practices for Energy on a "Day-Ahead" basis or pursuant to the "Hour-Ahead Scheduling Process," as such terms are defined in the applicable OATT.

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller shall use commercially reasonable efforts to forecast the Available Capacity accurately and to transmit such information in a format reasonably acceptable to Purchaser. Purchaser and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with changes to the applicable OATT, accommodate changes to their organizational structure and address changes in the operating and scheduling procedures of Purchaser, Third Party Scheduling Coordinator (if applicable) and the Transmission Provider, including but not limited to automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term, and (II) on or before July 1 of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Purchaser and Third Party Scheduling Coordinator (if applicable) a non-binding forecast of the hourly Available Capacity for each day in each month of the following calendar year in a form reasonably acceptable to Purchaser.

(B) Monthly Forecast of Available Capacity. Thirty (30) days before the commencement of the Delivery Term and thirty (30) days before each subsequent month of the Delivery Term, Seller shall provide to Purchaser and Third Party Scheduling Coordinator (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Purchaser.

(C) Daily Forecast of Available Capacity. During the Delivery Term, Seller or Seller's agent shall provide a binding day ahead forecast of Available Capacity (the "***Day-Ahead Availability Notice***") to Purchaser or Third Party Scheduling Coordinator (as applicable) via email for each day no later than 6:00 AM of the day before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. The capacity forecasted in the Day-Ahead Availability Notice will be the scheduled output of the Project. The current industry standard Preschedule Day timetable in the WECC is as follows:

(1) Monday – Preschedule Day for Tuesday

- (2) Tuesday – Preschedule Day for Wednesday
- (3) Wednesday – Preschedule Day for Thursday
- (4) Thursday – Preschedule Day for Friday and Saturday
- (5) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website ([www.wecc.biz](http://www.wecc.biz)) under the document title, “Preschedule Calendar.” Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller’s forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day then Seller must notify Purchaser of such change by telephone and shall send a revised notice to Purchaser in accordance with Section 10.4. Such notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW (AC), and any other necessary information.

Day-Ahead Desk

Primary Telephone: (425) 462-3291

Backup Telephone: (425) 462-3343

Backup Telephone: (425) 462-3421

If Seller fails to provide Purchaser with a Day-Ahead Availability Notice as required herein, then, until Seller provides a Day-Ahead Availability Notice, Purchaser may rely on the most recent Day-Ahead Availability Notice submitted by Seller to Purchaser.

(D) Hourly Forecast of Available Capacity. During the Delivery Term, Seller shall notify Purchaser of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible. Such notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information reasonably requested by Purchaser. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Purchaser of such outage within ten (10) minutes of the commencement of the

Forced Outage. Seller shall inform Purchaser of any developments that will affect either the duration of such outage or the availability of the Project during or after the end of such outage. These notices and changes to Available Capacity shall be communicated by telephone to Purchaser's Real-Time Desk and shall be sent to RealTimeTraders-list-@pse.com.

Real-Time Desk

Primary Telephone: (425) 462-3622

**2.11 Sales for Resale.** All Delivered Energy delivered to Purchaser hereunder shall be sales for resale. As necessary to avoid or prevent any material adverse effect to Seller, Purchaser shall provide Seller with appropriate documentation reasonably requested by Seller to evidence that Purchaser is exempt from sales tax in connection with its purchase of Delivered Energy under this Agreement.

**2.12 Facility Operations and Maintenance; Availability Reporting.**

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

(b) As soon as reasonably practicable after the Effective Date, and in any event no later than ninety (90) Days prior to the expected Delivery Term Start Date, Seller shall develop proposed written operating procedures for the Facility and submit such proposed procedures to Purchaser for Purchaser's review and approval (as approved by Purchaser, the "Operating Procedures"). Purchaser shall have forty-five (45) Days from the date it receives the proposed Operating Procedures to review and provide comments to Seller. Seller shall incorporate all of Purchaser's reasonable comments into the final Operating Procedures, which shall be subject to approval by Purchaser. The Parties agree that the Operating Procedures will cover the protocol under which the Parties will perform their respective obligations under this Agreement and will include procedures concerning the following: (i) the method of day-to-day communications and reporting; (ii) key personnel lists for Seller and Purchaser; (iii) reasonable coordination regarding the timing of scheduled maintenance and Planned Outages; (iv) reporting of scheduled maintenance, Planned Outages and Forced Outages of the Facility, (v) reporting of curtailment periods, including Purchaser Voluntary Curtailments, System Curtailments or Seller Compliance Curtailments; and (vi) ongoing reporting of projected capacity reductions due to Planned Outages, Forced Outages, Seller Compliance Curtailments and any other curtailments reasonably foreseeable by Seller.

(c) No later than ninety (90) days prior to the commencement of each Contract Year, Seller will provide Purchaser a non-binding Planned Outage schedule for the forthcoming year. No Planned Outages shall be scheduled during the months of November, December, January and February. Additionally, Seller shall use commercially reasonable efforts to limit Planned Outages during the months of October and March. Seller shall be excused from providing electricity during any Planned Outage in the months of March, April, May, June, July, August, September, and October to the extent thereof (but without limiting Seller's obligations as regards the Guaranteed Winter Period Monthly Output and the Guaranteed Annual Availability Factor).

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

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

### **2.13 Performance Guarantees.**

(a) Guaranteed Winter Period Monthly Output.

(i) Seller guarantees that in each Contract Year during the Term, Seller's Output shall be no less than [REDACTED] MWh in November, [REDACTED] MWh in December, [REDACTED] MWh in January, and [REDACTED] MWh during February in non-leap years, or [REDACTED] MWh during February in any leap year (the "Guaranteed Winter Period Monthly Output").

(ii) The Parties agree that in the event that Seller's Output during any of the months of November, December, January, or February is less than the applicable Guaranteed Winter Period Monthly Output for that month, Seller shall pay Purchaser liquidated damages in an amount equal to (a) the Guaranteed Winter Period Monthly

Output for the relevant month *minus* Seller's Output during the relevant month *multiplied* by (b) the greatest of the following: (1) the positive difference, if any, of the weighted average of the [REDACTED] Prices for the relevant month, *plus* the Attribute Price for each MWh, *minus* the Contract Rate; (2) fifty percent (50%) of the weighted average of the [REDACTED] Prices for the relevant month; and (3) [REDACTED] Dollars and [REDACTED] Cents (\$ [REDACTED]) per MWh.

(iii) In the event that Seller incurs liquidated damages under this Section 2.13(a), Seller shall include, on the first invoice issued pursuant to Section 2.5(a) for the calendar month following the month in which the shortfall in the Guaranteed Winter Period Monthly Output occurred, a credit for the liquidated damages for the prior calendar month (together with supporting documentation). The provisions of Section 2.5(c) shall apply, *mutatis mutandis*, to any disputed amounts with respect to such invoices.

(b) Guaranteed Annual Availability Factor.

(i) Seller guarantees that in each Contract Year during the Term, the Facility shall achieve an Availability Factor of at least [REDACTED] percent ([REDACTED]%) ("Guaranteed Annual Availability Factor").

(ii) The Parties agree that in the event that the Availability Factor during any Contract Year is less than the Guaranteed Annual Availability Factor, Seller shall pay Purchaser liquidated damages in an amount equal to (a) the Guaranteed Annual Availability Factor *minus* the Availability Factor during such Contract Year *multiplied* by (b) the Contract Capacity *multiplied* by (c) the greater of (1) the positive difference, if any, of the [REDACTED] Prices for such Contract Year, *plus* the Attribute Price for each MWh, *minus* the Contract Rate or (2) fifty percent (50%) of the [REDACTED] Prices for such Contract Year.

(iii) In the event that Seller incurs liquidated damages under this Section 2.13(b), Seller shall include on the first invoice issued in any Contract Year pursuant to Section 2.5(a), or as soon as reasonably practicable thereafter, a credit for the liquidated damages for the prior Contract Year (together with supporting documentation). The provisions of Section 2.5(c) shall apply, *mutatis mutandis*, to any disputed amounts with respect to such invoices.

(c) To the extent any damages required to be paid for a breach or failure hereunder are referred to as liquidated damages herein, the Parties acknowledge that the damages suffered as a result of such breach or failure are difficult or impossible to determine and that the liquidated damages set forth herein constitute the Parties' genuine pre-estimate of the loss expected to be incurred by the other Party as a result of the defaulting Party's failure to perform and are therefore an appropriate remedy.

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

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

**2.16 Seller Extraordinary Excuse Events**

(a) Seller shall have the right, subject to strict compliance with the terms of this Section 2.16, to declare two (and not more than two) Seller Extraordinary Excuse Events during the Term of this Agreement. Seller shall not be permitted to declare both a Seller Extraordinary Excuse Event and a Force Majeure with respect to the same outage. The declaration by Seller of a Seller Extraordinary Excuse Event shall have the following effects:

(i) Seller shall be permitted to count as Deemed Energy the amount of Energy that would have been Delivered Energy during such Seller Extraordinary Excuse Event (based on a fair and reasonable calculation by Seller of the amount of Delivered Energy that would have been produced by the Facility and Delivered to Purchaser during such period but for the Seller Extraordinary Excuse Event, and subject to the time limitation on such Seller Extraordinary Excuse Event contemplated by Section 2.16(b) below); and

(ii) Notwithstanding Seller’s declaration of such Seller Extraordinary Excuse Event, Seller shall use diligent efforts to remedy or overcome the outage, and the suspension of performance resulting from the outage shall be of no greater scope and of no longer duration than is required by the outage.

(b) As used herein, a “Seller Extraordinary Excuse Event” shall occur when all of the following shall have occurred:

(i) a complete outage of the Facility for any reason other than Seller’s gross negligence or willful misconduct shall have occurred;

(ii) Seller shall not have previously declared two (2) Seller Extraordinary Excuse Events; and

(iii) Seller notifies Purchaser in writing in accordance with Section 10.4 that Seller is designating such outage a Seller Extraordinary Excuse Event, provided that such notice shall not be effective unless Seller shall have delivered such notice to Purchaser on or before the tenth (10th) day of such outage;

provided, however, that in no event shall any Seller Extraordinary Excuse Event continue for more than sixty (60) Days. If any outage that has been declared by Seller to be a Seller Extraordinary Excuse Event continues beyond such sixty (60) Day limit, then (A) Seller shall not be permitted to count as Deemed Energy under the provisions of Section 2.16(a)(i) the amount of Energy that would have been Delivered Energy during any period of continuation of such outage from and after the sixty-first (61st) Day of such outage and (B) Seller shall not be permitted at any time thereafter to assert that such outage is attributable to a Force Majeure.

### ARTICLE 3 TERM

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

**3.2 Initial Term.** The initial term (the “Initial Term”) shall commence on the Effective Date and shall continue through December 31, 2037.

**3.3 Negotiation Period at End of Initial Term.** Upon notice delivered to Seller at least one (1) year but not more than eighteen (18) months prior to the expiration of the Initial Term, which notice shall contain the terms upon which Purchaser would propose to renew this Agreement beyond the Initial Term, Purchaser shall be entitled to require Seller to enter into good faith negotiations with Purchaser with respect to renewal of this Agreement for an additional period (any such period, the “Renewal Term”) at the Contract Rate or upon other pricing terms negotiated by the Parties. Seller shall respond to any such request and commence negotiations with Purchaser within forty-five (45) Business Days of receipt of notice from Purchaser. In the event that Seller and Purchaser have not, on or before two hundred and seventy (270) days prior to the expiration of the Term, entered into a definitive agreement for continuation of this Agreement for a Renewal Term, Seller shall be under no further obligation to negotiate with Purchaser with respect to the Energy and Attributes or the Facility with respect to any period following the Initial Term, and Seller may proceed with negotiations with respect to or definitive agreements to sell the Energy and Attributes thereafter without restriction.

### ARTICLE 4 CREDIT SUPPORT

**4.1 Credit Support.** Commencing on the date that is thirty (30) days prior to the Delivery Term Start Date, Seller shall be obligated to furnish a Letter of Credit in the aggregate amount of [REDACTED] Dollars (\$ [REDACTED]). Purchaser shall be entitled to draw upon or be paid

from such Letter of Credit for any obligation of Seller arising under this Agreement that is not paid when due (subject to any applicable cure periods).

**4.2 Seller Credit Event.** Upon the occurrence of a Seller Credit Event, Seller shall have ten (10) Business Days following notice from Purchaser to remedy the situation by providing a replacement Letter of Credit meeting the requirements of this Article 4. In the event that Seller fails to provide such additional Letter of Credit or other credit assurance acceptable to Purchaser within such ten (10) Business Days, then an Event of Default will be deemed to have occurred and the Purchaser will be entitled to the remedies set forth in Article 8 of this Agreement, without the application of any cure periods.

**4.3 Letter of Credit.** Any Letter of Credit provided pursuant to this Agreement shall be issued by a Creditworthy Bank in a form reasonably acceptable to Purchaser (it being agreed that the form of Letter of Credit attached as Exhibit C hereto is acceptable to Purchaser) and must provide, among other things, that the beneficiary of such Letter of Credit is entitled to draw the full amount of such Letter of Credit if: (i) the Letter of Credit has not been renewed or replaced within thirty (30) Days prior to the expiration date of the Letter of Credit; or (ii) the issuer of the Letter of Credit is no longer a Creditworthy Bank and Seller has failed, within ten (10) Business Days after receipt of written notice thereof by Purchaser to replace such Letter of Credit with another Letter of Credit issued by a Creditworthy Bank, in a form acceptable to Purchaser, or other replacement credit support as may be acceptable to Purchaser in its sole discretion. Costs of a Letter of Credit shall be borne by Seller.

**4.4 Reporting Requirements.** Seller has furnished to Purchaser a report from Marsh Captive Solutions detailing an estimated Standard & Poor's credit rating for Seller (a "Marsh Credit Report") as of April 5, 2019. Seller shall deliver to Purchaser an updated Marsh Credit Report no later than fifteen (15) days after receipt by Seller of each such report during the Delivery Term. Purchaser shall use any Marsh Credit Report solely for purposes of evaluating the creditworthiness of Seller in connection with Seller's obligations under this Agreement, and for no other purpose.

**4.5 Uniform Commercial Code Waiver.** This Agreement sets forth the entire agreement between the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in this Agreement, neither Party (i) has or will have any obligation to post credit support, pay deposits, make any other prepayments or provide any other financial assurances in any form whatsoever, or (ii) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of this Agreement. The Parties waive all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines.



**ARTICLE 5**  
**DATA, METERING AND MEASUREMENT**

**5.1 Metering Equipment.**

(a) Purchaser:

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

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

(iii) Shall exercise reasonable care in the maintenance and operation of any such Meters and equipment so as to assure to the maximum extent reasonably practicable an accurate determination of the quantities of the hourly Delivered Energy. Purchaser's Primary Meter shall be located at the Metering Point or on Seller's side of the Metering Point. Except as provided in Section 5.2, Purchaser's Primary Meter shall be used for quantity measurements under this Agreement; and

(iv) May install and operate at the Facility check meters to measure Delivered Energy ("Purchaser's Check Meters").

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

(c) Seller may continue to operate at the Facility check meters to measure Delivered Energy ("Seller's Check Meters"). To the extent practicable, Seller will allow for maintenance of meters and meter instruments outside of principal generating hours, but in the event operations are required to be curtailed below the Contract Capacity during any period in order to maintain Purchaser's Meters, such curtailment shall be deemed a Purchaser Voluntary Curtailment and all Energy that would have otherwise been made available at the Metering Point as Delivered Energy shall be treated as Deemed Energy for the purposes of calculating Seller's Output.

**5.2 Measurement of Delivered Energy.** Readings of Purchaser's Primary Meter shall be conclusive as to the amount of Delivered Energy delivered hereunder; provided, however, that in the event, and for so long as, Purchaser's Primary Meter is out of service or is determined, pursuant to Section 5.3, to be registering inaccurately, measurement of Delivered Energy delivered hereunder shall be determined by:

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

(b) In the event that Seller's Designated Check Meter is not installed, is out of service or is determined pursuant to Section 5.3 to be registering inaccurately, Purchaser's Check Meter if installed; or

(c) In the event that (A) Seller's Designated Check Meter is not installed, is out of service or is determined pursuant to Section 5.3 to be registering inaccurately and (B) Purchaser's Check Meter is not installed, is out of service or is determined pursuant to Section 5.3 to be registering inaccurately, by making a mathematical calculation of the Delivered Energy delivered to Purchaser based on the actual availability data during such period over which Purchaser's Primary Meter was out of service or registering inaccurately; or

(d) In the event that (A) Seller's Designated Check Meter is not installed, is out of service or is determined pursuant to Section 5.3 to be registering inaccurately, (B) Purchaser's Check Meter is not installed, is out of service or is determined pursuant to Section 5.3 to be registering inaccurately, and (C) the Parties reasonably determine that the mathematical calculation of the Delivered Energy delivered hereunder based on the actual availability data is not reliable as to the period over which Purchaser's Primary Meter was out of service or registering inaccurately, the Parties shall promptly meet and negotiate in good faith a method for determining Delivered Energy that is fair and reasonable in the circumstances.

**5.3 Testing and Correction.**

(a) The accuracy of Purchaser's Primary Meter and Purchaser's Check Meter, if installed, shall be tested and verified by Purchaser regularly, but in any event no less than every two (2) years. Except as set forth in Section 5.3(d)(v) and Section 5.3(d)(vi), Purchaser shall be responsible for all costs, including inspection and testing costs, in connection with Purchaser's Primary Meter and such cost is included in the Contract Rate.

(b) The accuracy of Seller's Check Meter, if installed shall be tested and verified by Seller regularly, but in any event no less than every two (2) years. Except as set forth in Section 5.3(d)(v) and Section 5.3(d)(vi), Seller shall be responsible for all costs, including inspection and testing costs, in connection with Seller's Check Meter.

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

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

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

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

(iii) If the Parties mutually and reasonably determine that the Meter is registering outside the zero decimal five percent (0.5%) variance provided for in paragraph (c) above, then such Meter shall be deemed to be registering inaccurately for purposes of Section 5.2;

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

(v) Following the third-party testing of a Meter provided for in Section 5.3(d)(iv), should such Meter be found (in a report distributed to both Parties) to be registering within the permitted zero decimal five percent (0.5%) variance, the disputing Party shall bear the cost of inspection and such Meter shall be deemed accurate for the purposes of calculating the Delivered Energy pursuant to Section 5.2;

(vi) Following the third-party testing of a Meter provided for in Section 5.3(d)(iv), should such Meter be found (in a report distributed to both Parties) to be registering outside the permitted zero decimal five percent (0.5%) variance, the non-disputing Party shall bear the cost of inspection and such Meter shall be deemed not accurate for the purpose of calculating the Delivered Energy pursuant to Section 5.2; and

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

(e) If, upon testing, any of the Meters used to determine the amount of Delivered Energy is found to be in error by more than the permitted zero decimal five percent

(0.5%) variance, an adjustment shall be made correcting all measurements by the inaccurate Meters for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(i) The Parties shall in good faith estimate the amount of the necessary adjustment on the basis of deliveries of Energy from the Facility during periods of similar operating conditions when the Meter was registering accurately. Upon the good faith mutual agreement of the Parties with respect to the estimate, the adjustment shall be made for the period during which inaccurate measurements were made.

(ii) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Meter to the test that found the Meter to be inaccurate, or (ii) the twelve (12) months immediately preceding the test that found the Meter to be defective or inaccurate.

(f) If the difference of the payments actually made by Purchaser minus the adjusted payment is a positive number, Seller shall credit the difference, without interest, to Purchaser on the next invoice issued by Seller. If the difference is a negative number, Purchaser shall pay the difference, without interest, to Seller on the next invoice issued by Seller. Such payment or credit, as applicable, shall be made in accordance with Section 2.5.

**5.4 Meter Data and Records.** Purchaser's Primary Metering is required for both revenue purposes and System Operations purposes in this case. Purchaser shall continue to provide situational awareness to its Dispatch center from this meter. In general, for revenue metering, the Facility will comply with the requirements outlined in Purchaser's Electric Service Handbook for Commercial/Industrial/Multifamily & Manufactured Housing Developments (PSE Standards 6325.3000-3370), where applicable.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

### **6.1 Seller's Representations and Warranties.**

(a) Seller represents and warrants as follows:

(i) Seller is a corporation, duly organized, validly existing, and in good standing under the laws of the State of California, and is authorized to conduct business in Washington;

(ii) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and

performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;

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

(iv) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under, or require any consent, license or approval (except for those approvals set forth in Section 2.14) that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Seller or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) With the exception of the actions set forth in Section 2.14, Seller has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

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

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

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

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

## 6.2 *Purchaser's Representations and Warranties.*

(a) Purchaser represents and warrants as follows:

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

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

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

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

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

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

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

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

**ARTICLE 7**  
**INDEMNIFICATION AND INSURANCE**

**7.1 General Indemnity.**

(a) Indemnity by Seller. Subject to the provisions of Section 10.8, Seller shall release, protect, defend, indemnify and hold harmless Purchaser, its Affiliates, directors, officers, employees, agents and representatives, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from (i) the Energy and Attributes prior to Seller's delivery of such Energy and Attributes to the Delivery Point, or (ii) any property damage, bodily injuries or death suffered by any third party Person (including employees of the Parties) related to, arising from, or connected to any negligence or intentional misconduct of Seller or any failure by Seller to comply with any of its obligations hereunder.

(b) Indemnity by Purchaser. Subject to the provisions of Section 10.8, Purchaser shall release, protect, defend, indemnify and hold harmless Seller, its Affiliates, directors, officers, employees, agents and representatives, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from (i) the Delivered Energy and Attributes following sale and delivery of such Delivered Energy and Attributes to Purchaser at the Delivery Point, or (ii) any property damage, bodily injuries or death suffered by any third party Person (including employees of the Parties) related to, arising from, or connected to any negligence or intentional misconduct of Purchaser or any failure by Purchaser to comply with any of its obligations hereunder.

(c) Comparative Negligence. The indemnification provisions of this Section 7.1 shall apply notwithstanding the negligent acts or omissions of the indemnitee, but the indemnitor's liability to the indemnitee shall be reduced proportionately to the extent that a negligent act or omission of the indemnitee contributed to the loss, injury or property damage. Further, no indemnitee shall be indemnified hereunder for its loss, liability, injury and damage resulting from its gross negligence, fraud or willful misconduct.

(d) Notice and Limitation of Claims.

(i) If any Person seeking indemnification hereunder (an "Indemnified Party") believes that a claim, demand, suit, action or proceeding or other circumstance exists that has given or may reasonably be expected to give rise to a right of indemnification under this Section 7.1 (whether or not the amount thereof is then quantifiable) against a Party (the "Indemnifying Party"), such Indemnified Party shall assert its claim for indemnification by giving written notice thereof (a "Claim Notice") to the Indemnifying Party within ten (10) Business Days following the Indemnified Party's receipt of notice of such claim, demand, suit, action or proceeding. Each Claim Notice shall describe the claim in reasonable detail. The failure of the Indemnified Party to so notify the Indemnifying

Party shall not relieve the Indemnifying Party of liability hereunder except (and then only) to the extent that the defense of such claim, suit, action or proceeding is prejudiced by the failure to give such notice.

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

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

(iv) If, within thirty (30) days of receipt from an Indemnified Party of any Claim Notice, the Indemnifying Party (i) advises such Indemnified Party in writing



that the Indemnifying Party shall not elect to defend, settle or compromise such action or claim or (ii) fails to make such an election in writing, or if any of the conditions set forth in clauses (i) through (iv) of Section 7.1(d)(iii) above become satisfied, such Indemnified Party may, at its option following notice to the Indemnifying Party, defend, settle or otherwise compromise or pay such action or claim; provided, however, that the Indemnifying Party shall reimburse the Indemnified Party for the costs of defending against such action or claim (including reasonable attorneys' fees and expenses) and shall remain otherwise responsible for any liability with respect to amounts arising from or related to such action or claim, to the extent it is ultimately determined that such Indemnifying Party is liable with respect to such action or claim under this Agreement. The Indemnifying Party may elect to participate in such legal proceedings, negotiations or defense at any time at its own expense.

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

## **7.2 Insurance.**

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

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

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

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

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

(v) All-Risk Property Insurance covering physical loss or damage to the Facility with minimum limits based on the total replacement cost of the Facility.

(b) All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date hereof through the later of the expiration or termination hereof. If any insurance policy required to be obtained hereunder is on a “claims made” basis, Seller shall either maintain either “tail” coverage or continuous “claims made” liability coverage for a minimum of three (3) years following the expiration of this Agreement.

(c) Purchaser, its officers, agents and employees shall be named as additional insured on all Commercial General Liability, Auto Liability, and Umbrella/Excess Liability insurance policies required by the specifications hereunder to be maintained by or on behalf of Seller.

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

(e) All insurance coverage required by this Agreement shall be issued by an insurer with an A.M. Best’s rating of not less than “A-VIII” or such other insurer as is reasonably acceptable to Purchaser. Notwithstanding the foregoing, Seller may provide any or all of the insurance required by this Section 7.2 by way of a commercially reasonable self-insurance or captive insurance program.

(f) Seller shall require its insurer(s) to endeavor to notify Purchaser of any material change in, or cancellation of, the insurance required by this Section 7.2 at least thirty (30) Days prior to the effective date of such change or cancellation except in the case of non-payment of premiums in which case the notice shall be ten (10) Days.

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

## **ARTICLE 8**

### **DEFAULTS AND REMEDIES; SPECIAL TERMINATION EVENTS**

### **8.1 Events of Default.**

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

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

(ii) Failure by a Party to perform any other material obligation hereunder if such failure is not remedied within thirty (30) days after receipt by the Defaulting Party of written notice of such failure; provided that so long as the Defaulting Party has initiated and is diligently attempting to effect a cure, such Defaulting Party’s cure period shall extend for an additional sixty (60) days;

(iii) Any representation or warranty made hereunder by a Party shall have been false in any material respect when made, has resulted in a material adverse effect on the other Party and is not remedied within thirty (30) days after receipt of written notice of such failure; provided that so long as the Defaulting Party has initiated and is diligently attempting to effect a cure, such Defaulting Party’s cure period shall extend for an additional sixty (60) days;

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

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

(vi) Either Party assigns or otherwise transfers this Agreement in violation of the terms of Section 10.2.

### **8.2 Remedies.**

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

(i) To terminate this Agreement by providing written notice to the Defaulting Party of the Non-Defaulting Party’s exercise of its termination rights, which termination shall be effective twenty (20) days after the day such notice is deemed to be delivered under Section 10.4 (the “Early Termination Date”);

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

(iii) To accelerate any and all amounts due from the Defaulting Party for the period preceding the termination of this Agreement;

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

(v) To recover in connection with such termination the termination payment set forth in Section 8.3(b) or 8.3(c), respectively;

(vi) In the case of an Event of Default by Seller, to exercise any rights pursuant to Section 4.1 to draw upon any Letter of Credit provided by Seller; and

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

(b) Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance hereof. "Commercially reasonable efforts" by Seller shall require Seller to use commercially reasonable efforts to maximize the price received by Seller from third parties for Energy and Attributes not received by Purchaser in accordance with its obligations under this Agreement.

### **8.3 Termination Payment Calculation.**

(a) Upon termination of this Agreement as a result of an Event of Default, the Non-Defaulting Party shall calculate an amount (the "Termination Payment") equal to the aggregate of (i) the Market Value of this Agreement to the Non-Defaulting Party plus (ii) any costs incurred by the Non-Defaulting Party as a result of the termination of this Agreement due to the Defaulting Party's default. If the Termination Payment is a positive amount, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party. If the Termination Payment is a negative amount, the amount of the Termination Payment shall be deemed to be zero and no payment shall be made to either Party.

(b) In the case where the Defaulting Party is Purchaser, the "Market Value" shall be the positive difference, if any, obtained by subtracting (i) the present value as of the Early Termination Date of payments that are to be made under a Replacement Contract (whether or not actually entered into by Seller) during its term, from (ii) the present value as of the Early Termination Date of payments that would have been made under this Agreement for the period from the Early Termination Date to the scheduled expiration of the Term.

(c) In the case where the Defaulting Party is Seller, the “Market Value” shall be the positive difference, if any, obtained by subtracting (i) the present value as of the Early Termination Date of payments that would have been made under this Agreement for the period from the Early Termination Date to the then scheduled expiration of the Term, from (ii) the present value as of the Early Termination Date of payments that are to be made under a Replacement Contract (whether or not actually entered into by Purchaser) during its term.

(d) It is understood and agreed that it is not necessary for the Non-Defaulting Party to enter into a Replacement Contract to determine the per MWh price under a Replacement Contract and if a Replacement Contract is not entered into by the Non-Defaulting Party, the per MWh price with respect to a Replacement Contract shall be the fair market price of energy (including the price for reasonably comparable Attributes associated therewith) that would have been payable under a Replacement Contract as determined in a commercially reasonable manner by the Non-Defaulting Party. In determining the per MWh price when a Replacement Contract is not entered into, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.

(e) For purposes of calculating Market Value under this Section 8.3, (X) the quantity of energy used in the calculation shall be based upon reasonable assumptions regarding the future operation of the Facility as determined by the Non-Defaulting Party in good faith, (Y) commercially reasonable adjustments to the Replacement Contract shall be made by the Non-Defaulting Party to take into account, among other possible commercially material differences, differences due to length of term, capacity factors, capacity value, Attributes and the location of the output delivery point(s) under the Replacement Contract compared to the Delivery Point hereunder, and (Z) the discount rate to be used to determine present value as of the Early Termination Date of each future payment amount shall be the sum of one hundred (100) basis points plus the yield reported on page “USD” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) on the Early Termination Date for United States government securities having a maturity reasonably equivalent to the then remaining Term of this Agreement.

#### **8.4 Special Termination Events.**

(a) Each of the following shall constitute a “Special Termination Event” hereunder:

(i) Seller fails to achieve the Guaranteed Winter Period Monthly Output by an amount equal to [REDACTED] or more for two (2) or more months during any Winter Period, and such circumstance occurs either (A) in any two (2) consecutive Winter Periods, or (B) in any four (4) Winter Periods during the Term; and

(ii) Seller fails to achieve the Guaranteed Annual Availability Factor by an amount equal to [REDACTED] or more for any two (2) consecutive Contract Years or for any four (4) Contract Years during the Term.

(b) Upon the occurrence of a Special Termination Event, Purchaser shall have the right, by providing not less than twenty (20) days' prior written notice to Seller, to terminate this Agreement effective as of one year from and after the date of such notice without any liability of either Party resulting from such termination, provided that such termination shall not discharge or relieve either Party from any liability that has accrued prior to the date of such termination, and provided, further, that the Contract Rate payable by Purchaser during each month of the one-year extension shall be the lower of (i) the Contract Rate as in effect immediately prior to the date of such termination or (ii) the [REDACTED] Prices for such month plus the Attribute Price for each MWh; and provided, further, that Seller shall have the right, by providing not less than twenty (20) days' prior written notice to Purchaser, to terminate this Agreement at any time during such one-year period without any liability of either Party resulting from such termination; provided that such termination shall not discharge or relieve either Party from any liability that has accrued prior to the date of such termination.

**8.5 Effect of Termination.** In the event of termination pursuant to Section 8.3 or Section 8.4, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination; provided that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination (including any obligation in respect of a Termination Payment under Section 8.3) or any indemnity obligations under Article 7 or the provisions of Section 10.1, which provisions shall survive any termination of this Agreement.

## **ARTICLE 9 FORCE MAJEURE; CHANGE IN LAW**

**9.1 Force Majeure Generally.** The performance of any obligation required hereunder shall be excused during the continuation of any Force Majeure event suffered by the Party whose performance is hindered in respect thereof, to the extent such Force Majeure event prevents the affected Party from performing its obligations under this Agreement. The affected Party's time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure event shall be extended by a period of time reasonably necessary to compensate for the delay caused by the Force Majeure event, subject to any limitations on such extension provided for in this Agreement; provided, that the Party experiencing the delay or hindrance shall use diligent efforts to remedy or overcome the Force Majeure event and the suspension of performance shall be of no greater scope and of no longer duration than that required by the Force Majeure. The affected Party shall (i) as soon as reasonably practicable notify the other Party in writing describing in detail the occurrence of such Force Majeure event and the anticipated period of delay, but in no event shall the notification take longer than forty-eight (48) hours after the Party has determined

that a Force Majeure event has occurred; (ii) within ten (10) Days after the Party has knowledge of the Force Majeure event, provide a written explanation of the Force Majeure event and its effect on the affected Party's performance and (iii) thereafter provide periodic written reports (no less often than weekly) on the status of the affected Party's efforts to remedy its inability to perform and a good faith estimate of when it will be able to resume performance, in each case to the extent known at the time of the report, provided that, if the affected Party fails to notify or provide a written report to the other Party within the applicable timeframes set forth above, the affected Party shall not be entitled to relief as a result thereof until such time as the affected Party has remedied such failure and, in such case and subject to all limitations set forth in this ARTICLE 9, the affected Party shall only be entitled to relief for the period of time from and after the delivery of the applicable notice. If any Force Majeure event prevents the delivery or receipt of the Delivered Energy for more than ninety (90) consecutive Days (or, if such prevention results from a Force Majeure event that requires the replacement of equipment that is not then readily available in the market on commercially reasonable terms (such equipment may, for example, include a site substation step-up transformer), such additional amount of time as may be reasonably needed to obtain and install such equipment, but not to exceed an additional one hundred and eighty (180) Days), the non-affected Party may terminate this Agreement upon notice to the other Party but such termination shall be without liability of either Party, provided that such termination shall not discharge or relieve either Party from any liability that has accrued prior to the date of such termination. Each Party suffering a Force Majeure event shall take, or cause to be taken, such action as may be necessary to overcome or otherwise to mitigate, in all material respects, the effects of any Force Majeure event suffered by either of them and to provide written notice to the other Party of such actions, and to resume performance hereunder as soon as practicable under the circumstances.

## **9.2 Force Majeure Defined.**

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

(b) Subject to the foregoing, events that could qualify as Force Majeure include the following:

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

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

(iii) except as set forth in Section 9.2(c)(v) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);

(iv) explosion, accident or epidemic;

(v) governmental action or inaction; or

(vi) emergencies (including transmission load relief events and minimum generation emergencies) declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Facility or making it impossible for the Transmission Provider to transmit Energy, including Energy to be delivered pursuant to this Agreement.

(c) Force Majeure shall not be based on:

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

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

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

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

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



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

(vii) breakage or failure of equipment, unless the cause of such breakage or failure itself results from a Force Majeure event.

**9.3 Seller's Rights in Event of Change in Law.** Notwithstanding any other provision of this Agreement, in the event that a Change in Law occurs after execution of this Agreement that (i) causes the Facility or the Delivered Energy to cease to be entitled to certification as or to qualify as an eligible renewable resource under Ch. 19.285 RCW or causes the RECs to cease to qualify as renewable energy credits under RCW 19.285 ("Washington RPS Qualifications"), or (ii) causes the Facility or the Delivered Energy to cease to be entitled to certification from the CEC or to qualify as an Eligible Renewable Energy Resource (as such term is defined in California Public Utilities Code Section 399.12 or Section 399.16) or causes the RECs to cease to qualify as renewable energy credits under the requirements of the California Renewables Portfolio Standard ("California RPS Qualifications"), Seller shall use commercially reasonable efforts to comply with or implement any change or improvement to the Facility necessary for the Facility or the Delivered Energy to meet the Washington RPS Qualifications and the California RPS Qualifications ("RPS Qualification Improvement"); provided, however, that if after such Change in Law has occurred, Seller reasonably determines that the costs and expenses to Seller to implement the RPS Qualification Improvement will exceed \$250,000 over the Term ("RPS Qualification Expenditure Maximum"), Seller shall promptly notify Purchaser of such circumstance and shall include with such notice documentation and calculations to support such expected exceedance ("RPS Qualification Exceedance Notice"). Seller shall indicate in such RPS Qualification Exceedance Notice if it intends to incur the costs of such RPS Qualification Improvement. In the event that Seller issues an RPS Qualification Exceedance Notice and indicates therein that it does not elect to pay all such RPS Qualification Improvement costs, then (i) the Parties shall consider and discuss for a period of not less than thirty (30) days if an alternative allocation of responsibility for the amount of such RPS Qualification Improvement costs in excess of the RPS Qualification Expenditure Maximum would be mutually acceptable to the Parties (it being agreed that neither Party shall be under any obligation whatsoever to agree to any such alternative allocation, any such agreement being in each such Party's sole discretion) and (ii) if no alternative allocation is agreed pursuant to the foregoing clause (i), either Party may terminate this Agreement upon not less than twenty (20) days' notice to the other Party, without any liability of either Party resulting therefrom, provided that such termination shall not discharge or relieve either Party from any liability that has accrued prior to the date of such termination. Regardless of the amount of the RPS Qualification Improvement costs, in the event that a Change in Law occurs after execution of this Agreement that causes the Facility or the Delivered Energy to cease to meet the Washington RPS Qualifications or the California RPS Qualifications, and such circumstance is not remedied within ninety (90) days of the occurrence of the Change in Law, Purchaser may terminate this Agreement, without any liability of either Party resulting therefrom, provided that such termination shall not

discharge nor relieve Purchaser from any liability that has accrued prior to the date of such termination.

## **ARTICLE 10 MISCELLANEOUS**

### ***10.1 Confidential Information.***

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

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

(c) The restrictions of this Section 10.1 do not apply to:

(i) Release of this Agreement or any part or summary hereof to any Governmental Authority required for obtaining any approval or making any filing pursuant to Section 2.14, provided that (a) Seller agrees to cooperate in good faith with Purchaser to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law and (b) Seller shall provide reasonable notice to Purchaser, prior to disclosure (if not prevented by Applicable Law), of the time and scope of the intended disclosure in order to provide Purchaser an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure;

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

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

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

(v) Information which the Receiving Party determines that it is required to disclose pursuant to Applicable Law; provided the Receiving Party shall provide reasonable notice to the Disclosing Party of the time and scope of the intended disclosure and shall afford the Disclosing Party a reasonable opportunity to prevent or limit, at the Disclosing Party's cost and expense, such disclosure.

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

(e) Notwithstanding anything to the contrary contained herein, (i) Purchaser may disclose Confidential Information upon reasonable notice to Seller if Purchaser reasonably determines, based upon its status as a regulated public utility, that disclosure to a Governmental Authority is necessary or appropriate in connection with any submission or application to, or response from, any such authorities regarding the Facility and this Agreement, the effect thereof on Purchaser's rates or investment return or similar matters, provided that Purchaser shall (A) endeavor to keep Seller informed with respect to such disclosures, (B) file a written request in the form of a motion for protective order or for confidential treatment or other comparable written request that any Confidential Information be afforded confidential treatment and otherwise endeavor to obtain confidential treatment of Confidential Information, and (C) notify Seller promptly if Purchaser receives notice of any challenge to the request that such Confidential Information be afforded confidential treatment and (ii) Seller may disclose Confidential Information upon reasonable notice to Purchaser if Seller reasonably determines, based upon its status as a publicly-traded company, that disclosure to the market, investors or a Governmental Authority is necessary or appropriate under Applicable Law or relevant exchange rules, provided that Seller shall (A) endeavor to keep Purchaser informed with respect to such disclosures, and (B) limit such disclosure to the minimum required to meet Seller's obligation as determined by Seller in its reasonable discretion.

(f) Neither Party shall issue any press or publicity release, other than information that is required to be distributed or disseminated pursuant to Applicable Law (provided that in any such case the Party proposing to issue such release has, in accordance with the provisions of Section 10.1(c)(v)), given the other Party prior notice of such proposed release and an opportunity to prevent or limit such disclosure), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Facility, as are necessary in order to fulfill such Party's obligations under this Agreement.

(g) The obligations of the Parties under this Section 10.1 shall remain in full force and effect for two (2) years following the expiration or termination of this Agreement.

### ***10.2 Successors and Assigns; Assignment.***

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. In connection with any permitted assignment pursuant to this Section 10.2(a), among other things, (i) the assignee shall expressly assume all of the assignor's obligations under this Agreement (whether arising before or after such assignment) and (ii) the assignee shall agree in writing to be bound by the terms and conditions of this Agreement.

(b) If either Party wishes to assign, transfer, or otherwise convey its interest in this Agreement, it shall provide prior written notice of such proposed conveyance and information demonstrating the assignee or transferee meets the qualifications of Section 10.2(a) to the non-assigning Party, along with any other reasonably requested information. Within thirty (30) Days following receipt of notice of any proposed assignment, the non-assigning Party shall either consent or object to the proposed assignment, such consent not to be unreasonably withheld, provided that the assigning Party shall promptly provide any information on the proposed assignee or transferee requested by the non-assigning Party during such period.

(c) Notwithstanding the foregoing, either Party may, without the other's consent:

(i) transfer, sell, pledge, encumber, or assign this Agreement or the revenues or proceeds thereof in connection with any financing;

(ii) transfer or assign this Agreement to an Affiliate; or

(iii) transfer or assign this Agreement to any Person or entity succeeding to all or substantially all of the assets of such Party;

provided, however, that in the case of an assignment under clause (ii) or (iii) above, the assignee agrees to be bound by all terms and conditions hereof and, in the case of an assignment by Seller, either the assignee or its guarantor possesses a Credit Rating equal to or higher than Seller, or provides credit support reasonably acceptable to Purchaser.

(d) Except with respect to assignments pursuant to Section 10.2(c)(i) or Section 10.2(c)(ii) above, upon any permitted assignment or transfer of this Agreement, the assigning or transferring Party shall be, without further action by either Party, released and discharged from all obligations under this Agreement arising after the effective date of such assignment or transfer.

(e) If any Person other than Seller becomes the direct owner of all or substantially all of the assets comprising the Facility, Seller shall be required to assign this Agreement to such Person concurrently with the transfer of the applicable assets to such Person. For the sake of clarity, the foregoing shall not relieve Seller of the restrictions on assignment of this Agreement contained in this Section 10.2, and therefore if consent to the assignment of this Agreement is required, any proposed transfer of all or substantially all of the assets comprising the Facility shall require the consent of Purchaser to the same extent and subject to the same terms and conditions as is required for the assignment of this Agreement.

(f) Any transfer by either Party not expressly permitted under this Section 10.2 shall be null and void *ab initio* and of no force or effect and further shall be deemed to be an Event of Default hereunder.

**10.3 Change of Control of Seller.** A Change of Control with respect to Seller shall be considered an assignment of this Agreement to a third party and shall be subject to the various requirements set forth in Section 10.2 above, if such Change of Control would involve only Seller or Affiliates of Seller with respect to which the assets comprising the Facility constitute a significant portion of assets of such Affiliate.

#### **10.4 Notices.**

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

- (i) in writing;
- (ii) delivered by hand (against receipt), recorded courier or express service, or sent by electronic mail; provided that any communications delivered by electronic mail shall be in a portable document format (PDF); and
- (iii) delivered, sent or transmitted to the address for the recipient's communications as stated below; provided that if the recipient gives the other Party notice of another address, communications shall thereafter be delivered accordingly, and if the

recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

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

(i) if delivered by hand or delivered by courier or express service, at the time of delivery; or

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

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

If to Seller: Sierra Pacific Industries  
19794 Riverside Avenue  
Anderson, CA 96007  
Attn: David Branchcomb, Director, Power Contracting  
Email: dbranchcomb@spi-ind.com

With a copy to:

Sierra Pacific Industries  
19758 Riverside Avenue  
Anderson, CA 96007  
Attn: Scott Peterson, Power Contract Administrator  
Email: speterson@spi-ind.com

If to Purchaser: Puget Sound Energy, Inc.  
10885 NE 4th Street  
Bellevue, WA 98004-5591  
Attn: David E. Mills, Senior Vice President, Policy and Energy  
Supply  
Email: david.mills@pse.com

with a copy to:

Puget Sound Energy, Inc.  
10885 NE 4th Street  
Bellevue, WA 98004-5591  
Attn: General Counsel  
Email: steve.secris@pse.com

If to Purchaser in connection with the scheduling and reporting obligations of Section 2.10(b):

Puget Sound Energy, Inc.  
2380 116th Ave NE Suite 201 mailstop: VEROFC  
Bellevue, WA 98004  
Attn: Power Supply Operations  
Email: RealTimeTraders-list-@pse.com  
Telephone: (425) 462-3622

With a copy to:

Puget Sound Energy, Inc.  
Energy & Derivative Accounting, VEROFC  
P.O. Box 97034  
Bellevue, WA 98009-9734

Invoices for Purchaser should be sent to pwrgas@pse.com.

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

**10.6 Records; Audit Rights.**

(a) Seller shall maintain complete and accurate records of and supporting documentation for all charges under this Agreement and all other data or information created, generated, collected, processed or stored by Seller in its performance under this Agreement (“Contract Records”). Unless Purchaser instructs Seller to delete or destroy any Contract Records

or requests the return of such Contract Records to Purchaser, Seller shall retain Contract Records for a period of at least seven (7) years after the date of the performance or after termination of this Agreement (the “Retention Period”).

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

(c) Except as otherwise provided in this Section 10.6(c), each Party will be responsible for its own costs associated with any audit activity pursuant to this Section 10.6. If an audit reveals an overcharge of more than 10%, then Seller shall promptly reimburse Purchaser for the reasonable cost of the portion of such audit relating to the overcharge.

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

**10.8 Waiver of Certain Damages; Certain Acknowledgments.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT (EXCEPT TO THE EXTENT INDEMNIFICATION PAYMENTS ARE MADE PURSUANT TO SECTION 7.1 AS A RESULT OF AN INDEMNIFIED PERSON’S OBLIGATION TO PAY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES TO A THIRD PARTY (EXCLUDING EITHER PARTY’S AFFILIATES, LENDERS, OFFICERS, DIRECTORS, SHAREHOLDERS OR MEMBERS) AS A RESULT OF ACTIONS INCLUDED IN THE PROTECTION AFFORDED BY THE INDEMNIFICATION SET FORTH IN SECTION 7.1), NEITHER PURCHASER NOR SELLER (NOR ANY OF THEIR AFFILIATES, LENDERS, CONTRACTORS, CONSULTANTS, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR EMPLOYEES) SHALL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL,



PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES UNDER, ARISING OUT OF, DUE TO, OR IN CONNECTION WITH ITS PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY OF ITS OBLIGATIONS HEREIN, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, INDEMNITY OR OTHERWISE. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED TO BE THE EXCLUSIVE REMEDY THEREFOR, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. THE PARTIES ALSO AGREE THAT IN ALL CASES WHERE THIS AGREEMENT PROVIDES FOR LIQUIDATED DAMAGES, THE ACTUAL DAMAGES WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OBTAINING AN ADEQUATE REMEDY WOULD BE UNREASONABLY TIME CONSUMING AND EXPENSIVE, AND THEREFORE SUCH LIQUIDATED DAMAGES ARE A REASONABLE APPROXIMATION OF THE HARM AND NOT A PENALTY, AND IN NO EVENT SHALL SUCH LIQUIDATED DAMAGES BE CONSIDERED SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

**10.9 Survival.** Notwithstanding any provisions herein to the contrary, the obligations set forth in Section 7.1 and Sections 10.1, and 10.4 through 10.25, shall survive (in full force) the expiration or termination of this Agreement. All other provisions of this Agreement that must survive the expiration or earlier termination of this Agreement in order to give full force and effect to the intent of the Parties shall remain in effect and be enforceable following such expiration or termination to such extent.

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

**10.11 Standard of Review.** The Parties specifically intend and acknowledge and agree that, except as otherwise expressly provided in this Agreement neither Party shall be permitted to make a filing with the FERC under any provision of the Federal Power Act or the regulations promulgated thereunder that seeks to amend or otherwise modify, or requests the FERC to amend or otherwise modify, any provision of this Agreement at any time during the Term, except to implement an amendment or other modification to this Agreement that has been reduced to writing and signed by authorized representatives of both Parties pursuant to Section 10.5. In addition, to the extent any third party or the FERC acting *sua sponte*, seeks to amend or otherwise modify, or requests the FERC to amend or otherwise modify, any provision of this Agreement, the standard of review shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v.*

Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine).

**10.12 Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington without regard its conflicts of laws provisions that would result in the application of the laws of any other jurisdiction.

**10.13 Consent to Jurisdiction.**

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

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

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

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

(iii) Agrees that service of process in any such action may be effected by mailing a copy thereof by certified mail, return receipt requested, postage prepaid, to such Party its address(es) set forth in Section 10.4, or at such other address of which the other Parties hereto shall have been notified; and

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

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

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

**10.16 Specific Performance.** The Parties agree that no adequate remedy at law exists for a breach or threatened breach of any of the provisions of this Agreement, the continuation of which unremedied will cause the aggrieved Party to suffer irreparable harm. Accordingly, notwithstanding any other provision of this Agreement, the Parties agree that the Parties shall be entitled, in addition to other remedies that may be available to them, to immediate injunctive relief from any breach or threatened breach of any of the provisions of this Agreement and to specific performance of their rights hereunder, as well as to any other remedies available at law or in equity. This right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, the Parties would not have entered into this Agreement. The Parties agree that they will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the opposing Party has an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or in equity. The Parties shall not be required to provide any bond or other security in connection with any such order or injunction. The Parties also agree that (i) the seeking of any remedies pursuant to this Section 10.16 shall not in any way constitute a waiver of any right to seek any other form of relief that may be available under this Agreement.

**10.17 No Third-Party Beneficiaries.** Except as set forth in Section 7.1, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

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

**10.19 Further Assurances.** Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms hereof. Neither Party shall

unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 10.19.

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

**10.21 Forward Contract.** Each Party acknowledges and intends, and agrees that it will not contest or dispute, that: (i) the transactions contemplated under this Agreement constitute “forward contracts” within the meaning of Title 11 of the United States Code (the “Bankruptcy Code”); (ii) Purchaser is a “forward contract merchant” within the meaning of the Bankruptcy Code; and (iii) Purchaser’s rights under Section 8.3 of this Agreement constitute “contractual rights to liquidate” the transactions within the meaning of the Bankruptcy Code. Each Party acknowledges and agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in Section 366 of the Bankruptcy Code, and each Party agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding involving a Party. In any such proceeding, each Party further agrees to waive the right to assert that the other Party is a provider of last resort.

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

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

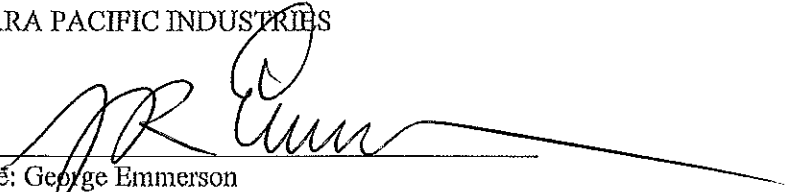
**10.24 Entire Agreement.** This Agreement supersedes all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

**10.25 Counterparts; Electronic Delivery.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument. The delivery of an executed counterpart of this Agreement by electronic exchange of .pdf documents shall be deemed to be valid delivery thereof.

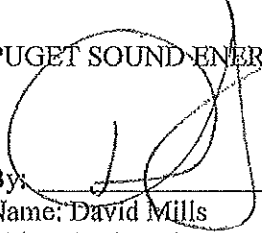
*[Signature Page Follows]*

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

SIERRA PACIFIC INDUSTRIES

By:   
Name: George Emmerson  
Title: President

PUGET SOUND ENERGY, INC.

By:   
Name: David Mills  
Title: Senior Vice President, Policy and Energy Supply

Signature Page -- Power Purchase Agreement

## ANNEX I

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

“After-Tax Basis” shall mean, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the “Base Payment”) supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest applicable statutory rates applicable to corporations doing business in Skagit County, Washington, if applicable and shall take into account the deductibility (for Federal income tax purposes) of state and local income taxes.

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

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

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

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

“Attribute Price” shall mean [REDACTED] dollars and [REDACTED] cents (\$ [REDACTED]) per MWh.

“Attributes” shall mean any and all Capacity Attributes associated with the Contract Capacity and Generation Attributes associated with the Delivered Energy, provided that Attributes shall not include any Incentives.

“Availability Factor” means, for any Contract Year, the quotient, expressed as a percentage, obtained by dividing (i) the aggregate quantity of Delivered Energy and Deemed Energy for such Contract Year by (ii) the product of the Contract Capacity and the Period Hours in such Contract Year.

“Available Capacity” means the amount of Energy, expressed in MW per hour, expected to be produced from the Facility.

“Bankruptcy Code” shall have the meaning set forth in Section 10.21.

“Balancing Authority” shall have the meaning set forth in the NERC Glossary of Terms.

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

“CAISO” shall mean the California Independent System Operator.

“California RPS Qualifications” shall have the meaning set forth in Section 9.3.

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

“CEC” means the California Energy Commission.

“Change in Law” means the adoption, enactment, promulgation, modification, amendment or revocation, after the Effective Date, of any Applicable Law, any interpretation, reinterpretation or administrative position relating to any Applicable Law, or any material requirements or condition in connection with the issuance, renewal, extension, replacement or modification of any Governmental Approval required by Seller in connection with this Agreement.

“Change of Control” shall mean, with respect to any Person, the occurrence of any one of the following with respect to such Person: (i) the consolidation with or merger into any other Person by such Person or by any other Person, or (ii) a direct or indirect assignment, conveyance, transfer, lease, exchange, conversion or other disposition of the equity interests in such Person or the voting rights with respect thereto; in either case, as a result of which the Person or Persons that Control, directly or indirectly, such Person shall cease to, directly or indirectly, Control such Person.

“Claim Notice” shall have the meaning set forth in Section 7.1(d).

“Confidential Information” shall have the meaning set forth in Section 10.1.

“Contract Capacity” shall mean 17 MW<sub>AC</sub>.

“Contract Rate” shall mean the applicable rates set forth in Exhibit A for the Contract Year in which the Energy is delivered.

“Contract Records” shall have the meaning set forth in Section 10.6.

“Contract Year” shall mean each year during the Term, whether such year is comprised of three hundred sixty-five (365) or three hundred sixty-six (366) Days, commencing at 0000 prevailing time on the Delivery Term Start Date and ending at 2400 prevailing time on the day before the first anniversary of the Delivery Term Start Date, and each anniversary thereof, or, in the case of the last Contract Year, the expiration of the Initial Term or Renewal Term, as applicable.

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

“CPUC” means the California Public Utilities Commission.

“Credit Rating” means (i) with respect to any entity other than a financial institution, the current (A) rating issued or maintained by S&P, Moody’s, or Fitch with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by insurance provider or other third-party credit enhancements) or (B) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P, Moody’s, or Fitch (provided that, if a corporate credit rating or long-term issuer rating is to be used for purposes of determining the Credit Rating, the rating used shall be one classification lower than the corporate credit rating or long-term issuer rating, as applicable, issued by S&P, Moody’s or Fitch), or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P, Moody’s, or Fitch with respect to such entity’s long-term, unsecured, unsubordinated deposits. In the event that any of S&P, Moody’s, or Fitch do not provide equivalent ratings, the lowest rating of the three shall control.

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

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

“Day-Ahead Availability Notice” shall have the meaning set forth in Section 2.10(b)(iii)(C).



“Deemed Energy” shall mean, for any applicable period during the Delivery Term, the amount of Energy that would have been Delivered Energy during such period (based on actual availability data during such period) but for (i) a Purchaser Voluntary Curtailment, (ii) a System Curtailment Order, (iii) an event of Force Majeure, (iv) a Seller Compliance Curtailment, (v) a System Emergency, (vi) an Event of Default by Purchaser that physically prevents the delivery of Energy to the Delivery Point, (vii) an outage on the Transmission Provider’s Transmission System, or (viii) a Seller Extraordinary Excuse Event, subject to the limitations thereon contained in Section 2.16.

“Defaulting Party” shall have the meaning set forth in Section 8.2.

“Delivered Energy” shall have the meaning set forth in Section 2.1(a).

“Delivery Point” shall mean, during each hour of the Term, the contract point known as SPI\_CABO\_GEN in e-tag scheduling documentation.

“Delivery Term” means the period time commencing on HE 0100 on January 1, 2021 and ending on HE 2400 on December 31, 2037 or, as applicable, HE 2400 of the final Day of a Renewal Term.

“Delivery Term Start Date” shall mean January 1, 2021.

“Disclosing Party” shall have the meaning set forth in Section 10.1.

“Dispute” shall have the meaning set forth in Section 10.15.

“Early Termination Date” shall have the meaning set forth in Section 8.2(a)(i).

“Effective Date” shall have the meaning set forth on the first page of this Agreement.

“Energy” shall mean electric energy generated by the Facility, and shall be in the form of three (3) phase, sixty (60) Hertz, alternating current.

“Event of Default” shall have the meaning set forth in Section 8.1.

“Facility” shall mean the electrical plant and equipment used to generate electricity utilizing biomass energy including, necessary ancillary electrical, metering, SCADA and control equipment, Seller’s Interconnection Facilities and any and all additions, replacements or modifications hereto.

“Federal Power Act” means the Federal Power Act of 1935, 16 U.S.C. § 791a, et seq.

“FERC” shall mean the Federal Energy Regulatory Commission.

“Fitch” shall mean Fitch Ratings Inc.

“Force Majeure” shall have the meaning set forth in Section 9.2.

“Forced Outage” shall mean the shutdown or unavailability of the Facility, or a portion thereof, other than as a Planned Outage, Purchaser Voluntary Curtailment or System Curtailment. A Forced Outage shall not include an outage that may be deferred to a Planned Outage consistent with Prudent Operating Practices and without causing or the reasonable likelihood of causing safety risk, damage to equipment or additional costs.

“Generation Attributes” shall mean any and all present or future (known or unknown) attributes associated with the capability of the Facility to produce Energy or Ancillary Services or the generation of Energy by the Facility, including current or future credits, credit privileges, emissions reductions, offsets, allowances and other benefits, rights, powers or privileges, however denominated, including as such may be provided for in any currently existing or subsequently enacted Applicable Law attributable to the Facility or the Energy that Purchaser purchases from Seller hereunder, other than Capacity Attributes. Examples of Generation Attributes include: RECs, the avoidance of the emission of any gas, chemical or other substance into the air, soil or water, or the reduction, displacement or offset of emissions resulting from fuel combustion at another location pursuant to any federal, state or local legislation or regulation addressing “greenhouse gases” or similar emissions as well as environmental or renewable energy credit trading program or any similar program now existing or hereafter developed under federal, state, local or foreign legislation or regulation or by any independent certification board or group generally recognized in the electric power industry. Generation Attributes include all rights to report ownership of any of the foregoing to any entity, organization, governmental body, or otherwise at Purchaser’s sole discretion, in each case that correspond to the Delivered Energy.

“Governmental Approvals” shall have the meaning set forth in Section 2.14.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, city council, public power authority, public utility district, joint action agency, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question, including NERC, FERC, and WECC.

“Guaranteed Annual Availability Factor” shall have the meaning set forth in Section 2.13(b)(i).

“Guaranteed Winter Period Monthly Output” shall have the meaning set forth in Section 2.13(a)(i).

“Incentives” shall mean (i) any and all present or future (whether known or unknown) state and federal investment and production tax credits, and any other tax credits which are or will be generated by the Facility, and (ii) present or future (whether known or unknown) cash payments, alternative digital currencies or cryptocurrencies provided or made available by non-governmental entities to the Facility or otherwise to renewable energy generators, or outright grants of money relating in any way to the Facility.

“Indemnified Party” shall have the meaning set forth in Section 7.1(d).

“Indemnifying Party” shall have the meaning set forth in Section 7.1(d).

“Initial Term” shall have the meaning set forth in Section 3.2.

“Interconnection Agreement” shall mean the Large Generator Interconnection Agreement, dated March 9, 2007 between Seller and Puget Sound Energy, Inc., as Transmission Provider, with respect to the Facility.

“Late Payment Rate” shall have the meaning set forth in Section 2.5(c).

“Lender” or “Lenders” shall mean any and all Persons or successors in interest thereof lending money, or extending credit to finance or fund the development, construction, ownership or operation of the Facility, including any refinancing(s) of such indebtedness.

“Letter of Credit” means an irrevocable, standby letter of credit issued by a Creditworthy Bank, substantially in the form of Exhibit C hereto or otherwise in form and substance satisfactory to Purchaser, and naming Purchaser as beneficiary thereunder, and otherwise meeting the requirements of this Agreement.

“Market Value” shall have the meaning set forth in Section 8.3.

“Marsh Credit Report” shall have the meaning set forth in Section **Error! Reference source not found.**

“Meter” shall mean a settlement quality, utility grade instrument and associated equipment meeting applicable electric industry standards as established by CAISO for SQMD, National Electrical Manufacturers Association and American National Standards Institute and used to measure and record the quantity and the required delivery characteristics of Energy delivered hereunder. Metering equipment must meet requirements for the most recent version of the CAISO Business Practice Manual for Metering as it relates to the creation of SQMD.

“Metering Point” shall mean the point designated as the point of interconnection in the Interconnection Agreement.

“Mid-Columbia Day-Ahead Off-Peak Price” shall mean the “ELECTRICITY-MID C OFF-PEAK-ICE” price, as published by the Intercontinental Exchange for the applicable day of delivery.

“Mid-Columbia Day-Ahead Peak Price” shall mean the “ELECTRICITY-MID C PEAK-ICE” price, as published by the Intercontinental Exchange for the applicable day of delivery.

“Minimum Contract Capacity” shall mean 12 MW<sub>AC</sub>.

“Moody’s” shall mean Moody’s Investor Service, Inc. rating group, or its successor.

“MW” shall mean a megawatt of capacity.

“MWh” shall mean a megawatt hour of Energy (rounded to the third decimal point).

“NERC” shall mean the North American Electric Reliability Corporation.

“Net Electrical Output” means, for any hour of the Delivery Term: (i) if the Facility is operating, the total Energy output of the Facility as delivered to the Delivery Point (i.e., net of station load and as measured by the Meter at the Metering Point in accordance with the Interconnection Agreement), provided that in no event shall the Net Electrical Output be less than zero, and (ii) if the Facility is not operating, zero.

“Non-Defaulting Party” shall have the meaning set forth in Section 8.2.

“OATT” means a Transmission Provider’s FERC-approved open access transmission tariff.

“Operating Procedures” shall have the meaning set forth in Section 2.12.

“Pacific Prevailing Time” shall mean the prevailing time in the eighth time zone west of Greenwich Mean Time.

“Parties” shall have the meaning set forth in the first paragraph of this Agreement.

“Party” shall have the meaning set forth in the first paragraph of this Agreement.

“Period Hours” means the aggregate amount of hours in any given Contract Year.

“Person” shall mean an individual, partnership, corporation, business trust, joint-stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company or any other entity of whatever nature.

“Planned Outage” shall mean the removal of equipment from service availability for inspection, maintenance or general overhaul of one or more equipment groups.

“Prime Rate” is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided, further, that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason, the “Prime Rate” shall mean a successor rate of interest per annum mutually agreed to as between Purchaser and Seller.

“Prudent Operating Practices” shall mean those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry for facilities in the U.S. of size, type, and design similar to the Facility at the relevant time period, or, in the absence of such practices, methods, standards and acts, any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts that were known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with and Applicable Law, good business practices, reliability, safety, environmental protection, and reasonable standards of economy and expedition, and which practices, methods, standards and acts reflect due regard for applicable operation and maintenance standards and operational limits. Prudent Operating Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others but rather to be a spectrum of acceptable practices, methods, standards or acts.

“Purchaser” shall have the meaning set forth in the first paragraph of this Agreement.

“Purchaser Voluntary Curtailment” shall mean the period of time during which (i) a Purchaser Voluntary Curtailment Order is in effect or (ii) Seller’s ability to tender Energy from the Facility for delivery at the Delivery Point is curtailed due to acts or omissions of Purchaser, or Purchaser’s designee or agent, the purpose or intent of which is to reduce deliveries of Energy by Seller under this Agreement for economic reasons.

“Purchaser Voluntary Curtailment Order” shall mean an instruction from Purchaser to Seller to reduce generation from the Facility by an amount and for a period of time as set forth in such instruction, for reasons unrelated to a System Curtailment Order. For sake of clarity, curtailment orders issued by Purchaser’s transmission function in its capacity as a Transmission Provider or any other Transmission Provider are System Curtailment Orders and not Purchaser Voluntary Curtailment Orders.

“Purchaser’s Check Meters” shall have the meaning set forth in Section 5.1(a)(iv).

“Purchaser’s Primary Meter” shall mean the Meter located at the Metering Point or on Seller’s side of the Metering Point, used for quantity measurements under this Agreement, in accordance with Article V.

“RCW” means the Revised Code of Washington.

“Receiving Party” shall have the meaning set forth in Section 10.1.

“RECs” means any and all present or future (known or unknown) renewable energy credits, offsets or other benefits allocated, assigned or otherwise awarded or certified to Seller or Purchaser by any Governmental Authority, program administrator or other certification board or other Person generally recognized in the renewable energy industry in connection with the Facility, including “renewable energy credits” or “alternative energy credits” as defined under certain state statutes and all rights to report ownership of such in compliance with federal, state or local laws and

regulations, including any reporting rights accruing under §1605(b) of the Energy Policy Act of 1992 and any present or future federal, state or local law or regulation, or international or foreign emissions trading programs.

“Renewal Term” shall have the meaning set forth in Section 3.3.

“Replacement Contract” shall mean a contract for the purchase and sale of renewable capacity (on an equivalent delivered basis) and energy produced from a renewable energy facility that (i) is entered into with a counterparty that has the same or similar creditworthiness as the Defaulting Party hereunder as of the Effective Date (or a counterparty whose obligations under the Replacement Contract are guaranteed by an entity with such creditworthiness), (ii) has a term substantially the same as the remaining unexpired portion of the Term, (iii) provides for the Attributes associated with the production of the energy to be transferred to the energy purchaser under such contract, and (iv) has a delivery point that is the same as or substantially similar to the Delivery Point hereunder or is otherwise delivered to Purchaser’s system, it being understood that commercially reasonable adjustments to the price under such contract shall be made to take into account, among other possible commercially material differences, differences due to length of term, capacity factors, Attributes and the location of the delivery point under the Replacement Contract compared to the Delivery Point hereunder.

“Retention Period” shall have the meaning set forth in Section 10.6.

“RPS Qualification Exceedance Notice” shall have the meaning set forth in Section 9.3.

“RPS Qualification Expenditure Maximum” shall have the meaning set forth in Section 9.3.

“RPS Qualification Improvement” shall have the meaning set forth in Section 9.3.

“S&P” shall mean Standard & Poor’s rating group (a division of McGraw-Hill, Inc.), or its successor.

“Scheduled Energy” shall mean all energy scheduled by Seller for delivery during such hour to the Delivery Point in accordance with Section 2.10(a).

“Scheduling Coordinator” shall mean the Person responsible for scheduling Energy from the Facility, in accordance with the OATT and the terms and conditions of this Agreement.

“Seller” shall have the meaning set forth in the first paragraph of this Agreement.

“Seller Compliance Curtailment” shall mean the period of time during which the Facility is partially or fully curtailed by Seller for the purpose of complying with Applicable Law or Governmental Approvals under a written curtailment protocol approved in advance by Purchaser in its reasonable discretion.

“Seller Credit Event” shall be deemed to have occurred if at any time Seller fails to satisfy its credit support obligations of Section 4.1 hereunder, which may include if a bank issuing a Letter of Credit as credit support hereunder ceases to be a “Creditworthy Bank.”

“Seller Extraordinary Excuse Event” shall have meaning set forth in Section 2.16(b).

“Seller’s Check Meters” shall have the meaning set forth in Section 5.1(c).

“Seller’s Designated Check Meter” shall mean Seller’s Check Meter, as adjusted to reflect the Energy delivered to the Metering Point, designated from time to time by Seller to act as a backup Meter pursuant to Section 5.2.

“Seller’s Interconnection Facilities” shall mean the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission Provider’s Transmission System up to, and on Seller’s side of, the Metering Point.

“Seller’s Output” shall mean, for any Contract Year or portion thereof, the (i) Delivered Energy in such period, *plus* (ii) the Deemed Energy in such period.

“Seller’s Primary Meter” shall mean the Meter installed to reflect the Energy delivered to the Metering Point.

“Special Termination Event” shall have the meaning set forth in Section 8.4.

“SQMD” shall mean Settlement Quality Meter Data.

“System Curtailment” shall mean the period of time during which a System Curtailment Order is in effect.

“System Curtailment Order” shall mean an instruction from a Transmission Provider or any other entity having authority, now or in the future, over the transmission system (which may include a reliability coordinator, Balancing Authority, independent system operator, distribution operator, etc.) to reduce generation from the Facility for (i) System Emergencies, (ii) outages (planned or unplanned) of any portion of the transmission system, or (iii) abnormal system conditions.

“System Emergency” shall mean an “Emergency Condition” (as defined in a Transmission Provider’s OATT).

“Term” shall have the meaning set forth in Section 3.1.

“Termination Payment” shall have the meaning set forth in Section 8.3.

“Third Party Scheduling Coordinator” shall mean a third party designated by Purchaser, in Purchaser’s sole discretion, to serve as the Scheduling Coordinator for the Facility under this Agreement.

“Transmission Charges” shall have the meaning set forth in Section 2.9.

“Transmission Provider” shall mean Puget Sound Energy, Inc., solely in its transmission function, or any successor to the Transmission Provider’s Transmission System.

“Transmission Provider’s Transmission System” shall mean the facilities for the transmission of Energy from and after the Delivery Point.

“Washington State and Local Sales and Use Taxes” means Washington state and local retail sales and use taxes (including Washington State Retail Sales Taxes) imposed pursuant to RCW 82.08, RCW 82.12 or RCW 82.14, if any, and other substantially similar sales and use taxes imposed under Washington state or local law (including, by reason of a change in Applicable Law) which, for purposes of clarity, the Parties specifically agree shall not include any business and occupation taxes.

“Washington RPS Qualification” shall have the meaning set forth in Section 9.3.

“WECC” shall mean Western Electricity Coordinating Council.

“Winter Period” shall mean the months of November, December, January, and February.

“WREGIS” means the Western Renewable Energy Generation Information System or its successor system(s).



**EXHIBIT A**  
**CONTRACT RATE**  
**Initial Term**

Contract Year	Contract Rate (\$/MWh)	
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		

REDACTED  
VERSION

**EXHIBIT B**

**RENEWABLE ATTESTATION FORM**

A. Reference is made to that certain Power Purchase Agreement (the “Agreement”) by and between [Sierra Pacific Industries], a [California corporation] (“Seller”), and Puget Sound Energy, Inc., a Washington corporation (“Purchaser”), dated [●], 2019. Unless otherwise defined herein, all defined terms shall have the meanings assigned to them in the Agreement.

B. I, [Name], [Title], as the authorized representative of Seller hereby declare under penalty of perjury, to the best of my knowledge, that (1) Seller hereby sells, transfers and delivers to Purchaser, the Attributes associated with Delivered Energy that is actually purchased by Purchaser pursuant to the Agreement, and (2) the Attributes associated with Delivered Energy that is actually purchased by Purchaser pursuant to the Agreement:

1. were generated by the biomass-powered generation facility for the generation of electric energy located in Skagit County, Washington and sold, subject to receipt of payment, to Purchaser;
2. are solely and exclusively owned by Seller;
3. are sold only once by Seller exclusively to Purchaser;
4. have not been used by Seller or any third party at all, including to meet any other program requirements in this state or another state or jurisdiction including any federal, state, or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or renewable energy mandate;
5. were not sold separately to any end-use customer or other wholesale provider other than Purchaser during the calendar year; and
6. were not used on-site to power any electrical generation equipment or for other on-site uses.

Generator Name	Generator ID Number	Fuel Type  (If biomass, lists fuel)	#MWhs RECs/ Power Sold	1 <sup>st</sup> Date of Generator Operation  (mm/yy)	NOx Emissions  (Lbs/MWh)	Co <sub>2</sub> Emissions  (Lbs/MWh)	Co <sub>2</sub> Emissions  (Lbs/MWh)	Period of Generation  (Q#/year)
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[SPI]*	[SPI]*	Biomass			N/A	N/A	N/A	

\*[SPI – SPI Burlington Facility]

C. This Attestation Form may be disclosed by Seller and Purchaser to others, including any certification authority, including but not limited to the Washington Utilities and Transportation Commission and the Federal Energy Regulatory Commission to substantiate and verify the accuracy of the Parties’ compliance, advertising and public claims.

D. As an authorized representative of Seller, I state that the above statements are true and correct to the best of my knowledge. This Attestation may serve as a bill of sale to confirm, in accordance with the Agreement, the transfer from Seller to Purchaser all of Seller’s right, title and interest in and to the Attributes as set forth above.

As an authorized agent of [Sierra Pacific Industries], I attest that the above statements are true and correct.

\_\_\_\_\_

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

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

Place of Execution: \_\_\_\_\_

**EXHIBIT C**

**LETTER OF CREDIT**

[LETTERHEAD]

[ Date ]

Irrevocable Standby Letter of Credit No.

**Beneficiary:**

Puget Sound Energy, Inc.  
10885 NE 4th Street  
Bellevue, WA 98004-5591

Attn: [Name]  
[Title]  
[Phone]  
[ ] (fax)

**Applicant:**

[Redacted]  
[Redacted]  
[Redacted]

Attn: Credit Department

Dear Madam or Sir:

We hereby establish for the account of [Sierra Pacific Industries] (the “Account Party”), our irrevocable standby letter of credit in your favor for an amount of USD \$[ ] ([*Amt in words*] Dollars United States currency) (the “Available Amount”). Account Party has advised us that this letter of credit is issued in connection with the Power Purchase Agreement, dated as of [ ], 2019 between Account Party and Beneficiary (as amended and as may be further amended, supplemented or otherwise modified). This letter of credit shall (i) become effective immediately for the term of one (1) year and shall expire on [ ] (the “Expiration Date”), and (ii) is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized officer of Beneficiary, dated the date of presentation and (b) the original of the letter of credit and all amendments (or photocopy of the original for partial drawings) and presented at our office located at [ ], attention [ ] (or

Exhibit C to SPI Burlington PPA

at any other office which may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a "Business Day"). If we receive your presentation at such office on any Business Day, all in conformity with the terms and conditions of this letter of credit, we will unconditionally honor the same by making payment in accordance with your payment instructions on or before the third succeeding Business Day after such presentation. Partial and multiple drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided* that the Available Amount shall be reduced by the amount of each such drawing.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized officer of Beneficiary, accompanied by this letter of credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the preceding Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. It is a condition of the letter of credit that it shall be deemed to be automatically extended without amendment for additional one-year periods until [ ] (the "Final Expiration Date"), unless at least sixty (60) days prior to the Expiration Date we send you notice by registered mail, return receipt requested or courier service or hand delivery at the above address that we hereby elect not to consider this letter of credit extended for such additional period.

4. This letter of credit shall be governed by, and construed in accordance with, the terms of the International Standby Practices, ISP 98, International Chamber of Commerce Publication No. 590 (the "ISP"), to the extent that such terms are not inconsistent with this letter of credit. As to matters not governed by the ISP, this letter of credit shall be governed by, and construed in accordance with, the laws of the State of New York, including, without limitation, the Uniform Commercial Code as in effect in the State of New York.

5. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1, 2 and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph 6.

6. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no. \_\_\_\_\_.

Very truly yours,

[LOC Issuer]

Authorized signature

**ANNEX 1**  
**TO LETTER OF CREDIT NO. \_\_\_\_\_**

Draft under Letter of Credit No. \_\_\_\_\_

[ *Month, Day , Year* ]

On [*third business day next succeeding date of presentation*]

Pay to [            ]            U.S. \$ \_\_\_\_\_ [not to exceed the Available Amount]  
          [Address 1]  
          [Address 2]

[*insert any wire instructions*]

For value received and charge to account of Letter of Credit No. \_\_\_\_\_ .

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

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

ANNEX 2

TO LETTER OF CREDIT NO. \_\_\_\_\_

Drawing under Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized officer of [ \_\_\_\_\_ ], a [ \_\_\_\_\_ ] located in [ \_\_\_\_\_ ], (“Beneficiary”), hereby certifies on behalf of Beneficiary with reference to irrevocable standby Letter of Credit No. \_\_\_\_\_ (the “Letter of Credit”) issued for the account of [ \_\_\_\_\_ ], that:

- 1) [pursuant to that certain [*agreement*] between Beneficiary and [*account party*] dated as of [ \_\_\_\_\_ ], an Event of Default as defined in said Agreement has occurred and as a result, the Beneficiary is entitled to payment of an amount equal to \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) from this Letter of Credit;]

--or--

[(i) Beneficiary has received notice from the Issuing Bank pursuant to Section 3 of the Letter of Credit, and (ii) the Letter of Credit will expire in fewer than thirty (30) Days from the date hereof. As such, as of the date hereof Beneficiary is entitled to draw under the Letter of Credit as specified in the accompanying sight draft.]

- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$ \_\_\_\_\_, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft;
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the Available Amount to which Beneficiary is entitled to draft under said [*agreement*] as of the date hereof.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized officer as of the date and year written below.

Date: \_\_\_\_\_

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

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



ANNEX 3

TO LETTER OF CREDIT NO. \_\_\_\_\_

Notice of surrender of Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_

Attention: Letter of Credit Department

Re: Letter of Credit No. \_\_\_\_\_ issued for the account of [*account party*]

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the “Letter of Credit”). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

\_\_\_\_\_

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

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