

**EXH. CPC-8C  
DOCKETS UE-22\_\_\_/UG-22\_\_\_  
2022 PSE GENERAL RATE CASE  
WITNESS: COLIN P. CROWLEY**

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**PUGET SOUND ENERGY,**

**Respondent.**

**Docket UE-22\_\_\_  
Docket UG-22\_\_\_**

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

**COLIN P. CROWLEY**

**ON BEHALF OF PUGET SOUND ENERGY**

**REDACTED VERSION**

**JANUARY 31, 2022**

*Execution Version*

**CLEARWATER WIND PROJECT**

**POWER PURCHASE AGREEMENT**

**between**

**PUGET SOUND ENERGY, INC.**

**as Purchaser**

**and**

**CLEARWATER ENERGY RESOURCES LLC**

**as Seller**

**dated as of**

**February 3, 2021**

**ROSEBUD, CUSTER AND GARFIELD COUNTIES, MONTANA**

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## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this “Agreement”) is made this 3<sup>rd</sup> day of February 2021 (the “Effective Date”), by and between Puget Sound Energy, Inc., a Washington corporation (“Purchaser”) and Clearwater Energy Resources LLC, a Delaware limited liability company (“Seller”). Purchaser and Seller are each individually referred to herein as a “Party” and collectively as the “Parties”.

### WITNESSETH:

WHEREAS, Seller is developing a Wind Project (defined below) with an anticipated aggregate nameplate capacity of approximately three hundred sixty (360) MWs to three hundred seventy-five (375) MWs on a site located in Rosebud, Custer and Garfield Counties, Montana, to be constructed in one of several configurations as more particularly described in Exhibit A hereto; and

WHEREAS, Seller desires to sell, and Purchaser desires to purchase and receive, up to three hundred fifty (350) MW of Delivered Energy and Attributes from the Wind Project 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 or entity shall include that Person or entity’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) 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

(l) 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 Commercial Operation 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 the Delivered Energy together with all Attributes associated therewith.

(b) In accordance with the terms and conditions hereof, subsequent to the commissioning of the first Turbine and continuing during each hour until the commencement of the Delivery 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 Test Energy together with all Attributes associated with the Test Energy; provided, however, that Purchaser may direct Seller to

curtail deliveries of Test Energy as necessitated by system conditions or to avoid adverse impacts on Purchaser. Any such direction from Purchaser shall constitute a Purchaser Voluntary Curtailment Order. “Test Energy” means all energy produced prior to the Commercial Operation Date by the Turbines actually installed and commissioned as part of the Wind Project and scheduled by Seller for delivery to the Delivery Point in accordance with Section 2.10(a).

(c) In no event shall Seller have the right (i) to procure any element of the Delivered Energy or Attributes from sources other than the Wind Project for sale or delivery to Purchaser under this Agreement, or (ii) except for in accordance with Section 2.4 or Section 2.16, sell Energy or Attributes from the Wind Project to any other Person.

(d) 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 Wind Project for re-sale in the market, and retain and receive any and all related revenues.

## **2.2 Contract Rate.**

(a) The Contract Rate for the Term is set forth in Exhibit B and is subject to adjustment as and to the extent set forth therein.

(b) For all Delivered Energy except Test Energy, Purchaser shall pay Seller an amount equal to the applicable Contract Rate set forth in Exhibit B multiplied by each MWh of Delivered Energy (rounded to the third decimal point) during the period from and including the commencement of the Delivery Term and continuing throughout the Term. Purchaser shall pay Seller for each MWh of Test Energy (rounded to the third decimal point) at a rate equal to [REDACTED] percent [REDACTED] of the [REDACTED] k Price or [REDACTED] Price, as applicable. Except as provided in Exhibit B, 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(d) below with respect to Montana State and Local Sales and Use Taxes, as between the Parties, Seller shall be responsible for any and all costs or charges imposed on or allocated to Seller or the Wind Project by any Governmental Authority or Transmission Provider (including any costs or charges allocated to Seller or the Wind Project under any OATT and associated with the Attributes of the Wind Project) up to the Delivery Point and Purchaser shall be responsible for any and all costs or charges imposed on or allocated to Purchaser or the Delivered Energy and Attributes by any Governmental Authority or Transmission Provider at and after the Delivery Point, except to the extent provided in Section 2.16.

(c) Other than the right and obligation 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 Wind Project in favor of Purchaser, and Purchaser hereby disclaims, any right, title or interest in any part of the Wind Project.

(d) 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 Montana State and Local Sales and Use Taxes and the sale of Attributes is not subject to Montana State and Local Sales and Use Taxes. In the event the sale of Energy and/or Attributes becomes subject to

Montana State and Local Sales and Use Taxes, Purchaser shall pay (and shall indemnify and hold Seller harmless on an After-Tax Basis from and against) all Montana State and Local Sales and Use Taxes arising out of or with respect to the purchase or sale of Delivered Energy and/or Attributes that are imposed by any taxing authority at or after the Delivery Point (regardless of whether such Montana State and 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 Montana State and Local Sales and Use Taxes, except where such interest, penalties, or additions are attributable to the acts or omissions of Seller. 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 and/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 and/or special assessments that may be levied upon the Wind Project as well as state or local sales taxes applicable to the construction, maintenance, repair or operation of the Wind Project, 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 associated with any Energy purchased by Purchaser pursuant to this Agreement, 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 Wind Project 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 Commercial Operation 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 Wind Project in WREGIS as an eligible renewable resource for Washington, and, if the Applicable Law then in effect so provides, for any other state reasonably requested by Purchaser during the Term. Commencing on the Commercial Operation 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 Wind Project. For each month of the Term, Seller shall, at Seller's sole cost and expense, deliver and convey the Attributes associated with the Delivered Energy within thirty (30) 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 Exhibit C

(“Attestation Form”) and/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, 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 Wind Project. 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 hereunder. 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 Orders.**

(a) In the event that Seller is required by a Purchaser Voluntary Curtailment Order to curtail energy deliveries from the Wind Project, Purchaser shall pay to Seller, as Seller’s sole remedy: (i) [REDACTED] for such Purchaser Voluntary Curtailment Period multiplied by (A) prior to the Commercial Operation Date, [REDACTED] or (B) after the Commercial Operation Date, [REDACTED]. If directed by Purchaser, Seller shall use reasonable efforts to sell Energy generated by the Wind Project (and associated Attributes) during such Purchaser Voluntary Curtailment Period at the best price reasonably available in the market at the time of sale in order to minimize negative financial impacts to Purchaser and any revenue from such sales shall be offset against amounts that would otherwise be due and owing by Purchaser (and otherwise shall accrue to Purchaser). In the event that Seller sells the Energy at a negative price, Purchaser will not be required to credit or true-up Seller for any costs or losses associated with the sale of Energy at a negative price. Seller shall provide Purchaser access to information reasonably necessary to verify Seller’s determination of Deemed Delivered Energy for any applicable period.

(b) For sake of clarity, the remedy provided for in Section 2.4(a) shall be Seller's sole and exclusive remedy with respect to a Purchaser Voluntary Curtailment Order and the Parties expressly acknowledge and agree that Purchaser shall not be liable for any other costs, expenses, taxes, or losses arising out of a Purchaser Voluntary Curtailment Order, including [REDACTED]

**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 from recordings produced by the Meter(s) for the Wind Project pursuant to Article 6, 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) Business 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(b), and (iii) any other amounts owed by one Party to the other Party pursuant to this Agreement. Not more than thirty (30) Days after receipt of each 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. Disputed portions of Seller's invoice shall be due and payable no later than ten (10) days after resolution of the dispute. 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. If, as a result of a Dispute settled in favor of Seller, additional amounts are owed to Seller, then the amount of the underpayment shall

bear interest from the date on which such payment should have been made by Purchaser through and including the date that the underpayment is paid by Purchaser 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 11.5. 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. 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 Delivered Energy and 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 Delivered Energy and Attributes free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to or at 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 that is not for a Planned Outage.

(b) Subject to Section 2.4, Seller shall curtail deliveries of Energy from the Wind Project 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) Seller shall comply with the processes and procedures set forth in Purchaser's Energy Imbalance Market Business Practice ("EIM BP") and any other applicable regional transmission organization or Transmission Provider scheduling processes and procedures, including the sections of the EIM BP regarding notice to be provided in the event of a Planned Generation Outage or Unplanned Generation Outage (as such terms are defined in the EIM BP).

(b) 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.

(c) Seller is responsible for securing any required Transmission Provider approvals for Wind Project outages (Planned Outages or Forced Outages, as applicable), 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 promptly and, in any event, within three (3) Business Days of Seller being made aware such Transmission Provider-required changes.

(d) Seller shall notify Purchaser, via telephone to a number specified by Purchaser or by email or other form acceptable to Purchaser through Seller's outage management system, of any Forced Outage as soon as practicable, but not longer than sixty (60) minutes after the occurrence thereof, and shall provide, to the extent information is available, notification of the reason, timing, expected duration, and impact of the Forced Outage on the Energy output of the Wind Project. No later than the fifteenth (15<sup>th</sup>) day of each month, Seller also shall provide to Purchaser, in a form reasonably acceptable to Purchaser, a monthly report of Forced Outages.

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

(a) Seller shall be responsible for presenting to and receiving the applicable Transmission Provider's direction with respect to and/or approval of the Wind Project interconnection requirements and facilities so that Seller can perform its Energy deliveries hereunder in accordance with applicable Transmission Provider requirements. Seller shall be responsible for arranging for all transmission services required up to the Delivery Point, and shall be responsible for the payment of any charges for transmission or wheeling services, ancillary services, control area services, congestion charges, location marginal pricing differentials, transaction charges, and line losses ("Transmission Charges") up to the Delivery Point. Purchaser shall be responsible for arranging for all transmission services required to effectuate Purchaser's purchase of Delivered Energy at and from the Delivery Point, and, should such charges arise, shall be responsible for the payment of any Transmission Charges at, from and after the Delivery Point.

(b) In the event that: (i) a 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) a 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 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.**

(i) From and after the commencement of deliveries of Test Energy, and thereafter each hour during the Term, Purchaser shall schedule for delivery at the Delivery Point a quantity of energy equal to Purchaser's good faith estimate of the actual quantity of Energy that Purchaser expects to be delivered at the Delivery Point.

(ii) Purchaser shall be responsible for arranging all scheduling services necessary to ensure compliance with applicable 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 at and after the Delivery Point, except to the extent caused by Seller.

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

(b) Seller Cooperation. To assist Purchaser with any applicable power scheduling regulations and protocols, Seller shall:

(i) every hour provide Purchaser with a two (2) day hourly look ahead, non-binding power forecast, showing the expected production of the Wind Project in MWh (which such forecast will be uploaded hourly on to an ftp site);

(ii) every day by no later than 5:30 a.m. Pacific Prevailing Time provide Purchaser with a seven (7) day hourly look ahead, non-binding power forecast, showing the expected production of the Wind Project in MWh (which such forecast file will be updated daily and supplied in the same file as the two (2) day look ahead forecast);

(iii) provide Purchaser and Purchaser's designated forecasting service, via a mutually acceptable protocol, with real time data for Wind Project performance information as reasonably requested by Purchaser, including, to the extent readily available, information such as data points for wind direction, wind speed, current MWh, number of Turbines available, number of Turbines running, and number of Turbines without communication, and shall cooperate in providing Purchaser with any other reasonably requested information on a real time basis; provided, however, that Purchaser



shall provide Seller with prior written notice of Purchaser's initial designated forecasting service on or prior to June 1, 2022, and may designate a different forecasting service from time to time by providing thirty (30) days' prior written notice to Seller of its designated forecasting service;

(iv) provide Purchaser, via a mutually acceptable protocol, with any reasonably requested control points, including MW setpoint;

(v) provide Purchaser with non-binding wind forecasts utilizing Seller's forecasting service; provided, however, that Purchaser may request that Seller utilize a different forecasting service, at Purchaser's sole cost and expense; and

(vi) take any steps necessary to remain in compliance with the requirements of the EIM BP.

**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 Wind Project Operations and Maintenance; Availability Reporting.**

(a) During the Term, the Wind Project 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 Wind Project and to perform its obligations hereunder. For the sake of clarity, costs associated with compliance by Seller with its obligations under the Interconnection Agreement shall not be reimbursable by Purchaser.

(b) As soon as reasonably practicable, and in any event no later than ninety (90) Days prior to the commissioning of the first Turbine, Seller shall develop proposed written operating procedures for the Wind Project and submit such proposed procedures to Purchaser for Purchaser's review and approval (as approved by Purchaser, the "Operating Procedures"). The processes and procedures set forth in the Operating Procedures shall comply with the requirements of the EIM BP. 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, but will not be limited to, procedures concerning the following: (i) the method of day-to-day communications and reporting; (ii) provision for prompt notice by Seller of any change to the plant manager of the Wind Project; (iii) reasonable coordination regarding the timing of scheduled maintenance and Planned Outages; (iv) monthly reporting of scheduled maintenance, Planned Outages and Forced Outages of the Wind Project; (v) reporting of curtailment periods, including

but not limited to Purchaser Voluntary Curtailment Periods, 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. Seller shall coordinate the scheduling of Planned Outages with Purchaser to the greatest extent reasonably possible. As a general matter, Purchaser shall allow Planned Outages as and when reasonably requested by Seller; provided, however, that if Purchaser determines that it is advantageous to accelerate or defer the Planned Outage in question, Purchaser may accelerate or defer any such outage for a period of up to thirty (30) days unless Seller reasonably determines that such acceleration or deferral would result in a failure to comply with Prudent Operating Practices, have a material negative effect on the availability of the Wind Project, or otherwise have a material detrimental impact on the general condition of the Wind Project or Seller's equipment. Seller shall be excused from providing electricity during any Planned Outage to the extent thereof (but without limiting Seller's obligations as regards the Guaranteed Winter Period Output and the Guaranteed Annual Availability Factor).

(i) Seller shall use commercially reasonable efforts to schedule Planned Outages and routine maintenance during the months of April, May, June, July, August, and September.

(ii) Seller shall use commercially reasonable efforts to limit the frequency and duration of Planned Outages and routine maintenance during the months of October and March.

(iii) Except to the extent that a Planned Outage is necessary or advisable in accordance with Prudent Operating Practices, no Planned Outages or routine maintenance shall be scheduled during any Winter Period. Seller shall provide Purchaser with prompt notice of any Planned Outage scheduled during any Winter Period, which notice shall be at least ten (10) Business Days prior to the commencement of such Planned Outage, except to the extent that such Planned Outage is necessary or advisable in accordance with Prudent Operating Practices to be conducted less than ten (10) Business Days prior to the provision of such notice.

(d) Seller shall notify Purchaser with as much advance notice 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 service obligations of Purchaser; provided, that Purchaser's requirements shall not unduly prejudice the operation and maintenance of the Wind Project.

(e) Not later than thirty (30) days following the end of each Contract Year and each Winter Period, Seller shall provide to Purchaser a written report detailing Seller's calculation of the Availability Factor for such Contract Year or Winter Period, as applicable. 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 *Availability Guarantees.*

#### (a) Guaranteed Annual Availability Factor.

(i) Seller guarantees that from and after the Firm Transmission Date, in each Contract Year the Wind Project 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 (or partial Contract Year if the Firm Transmission Date occurs after the start of a Contract Year or the end of the Delivery Term occurs during a 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 for such Contract Year or partial Contract Year, *multiplied by* (b) the Expected Energy for such Contract Year, *multiplied by* (c) the greater of (1) the positive difference, if any, of [REDACTED] (2) [REDACTED] percent ([REDACTED]%) of the weighted average of the [REDACTED] Prices for the relevant Contract Year and (3) [REDACTED] Dollars (\$ [REDACTED]) per MWh; provided, however, that the aggregate amount payable by Seller pursuant to this Section 2.13(a)(ii) with respect to any Contract Year shall not exceed [REDACTED] Dollars (\$ [REDACTED]).

#### (b) Guaranteed Winter Period Output.

(i) Seller guarantees that from and after the Firm Transmission Date, during each Winter Period during the Delivery Term Purchaser's Output shall be no less than [REDACTED] MWh ("Guaranteed Winter Period Output"). For the avoidance of doubt, unavailability due to Planned Outages or Forced Outages (except, in the case of Forced Outages, to the extent attributable to Force Majeure) shall in no way impact Seller's obligation to provide the Guaranteed Winter Period Output in a given Winter Period.

(ii) The Parties agree that in the event that the Purchaser's Output during any Winter Period (or partial Winter Period if the Firm Transmission Date occurs during a Winter Period or the end of the end of the Delivery Term occurs during a Winter Period) is less than the Guaranteed Winter Period Output, Seller shall pay Purchaser liquidated damages in an amount equal to (a) the Output Shortfall, *multiplied by* (c) the greater of (1) the positive difference, if any, of the [REDACTED], (2) [REDACTED] percent ([REDACTED]%) of the weighted average of [REDACTED] Prices for the relevant Contract Year and (3) [REDACTED] Dollars (\$ [REDACTED]) per MWh; provided, however, that

the aggregate amount payable by Seller pursuant to this Section 2.13(b)(ii) with respect to any Winter Period shall not exceed [REDACTED] Dollars (\$ [REDACTED]).

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

**2.14 Energy Imbalance Market.** Purchaser participates in the Energy Imbalance Market operated by the CAISO. Purchaser intends for the Wind Project to be designated as a participating resource (or its equivalent from time to time) in the Energy Imbalance Market, with Purchaser acting as Scheduling Coordinator (as defined in the CAISO Open Access Transmission Tariff) for the Wind Project. Purchaser and Seller shall work together to complete the technical review described in Section 3.3 of the EIM BP, which shall identify improvements to the Wind Project required for the Wind Project to be designated as a participating resource in the Energy Imbalance Market. Upon conclusion of the technical review, Seller shall cause any required improvements to the Wind Project to be implemented, at Seller's sole cost and expense. Seller shall work with Purchaser to take any steps necessary to ensure that the Wind Project qualifies as a participating resource in the Energy Imbalance Market and, if applicable, the Extended Day Ahead Market.

**2.15 Seller's 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 Securing Firm Transmission; Maximum Contract Capacity Adjustment Based on Transmission Constraints.**

(a) The Parties acknowledge and agree that as of the date hereof, Purchaser does not have the right to transmit the Delivered Energy on a firm basis from the Delivery Point to Purchaser's transmission system.

(b) Purchaser shall use commercially reasonable efforts to secure [REDACTED] MWs of firm transmission from the Delivery Point across the Colstrip Transmission System, the Eastern Intertie and BPA's transmission system to Purchaser's transmission system, and Seller agrees to cooperate in such efforts and, to the extent provided herein, fund certain Transmission Upgrade Costs (defined below). In furtherance of the foregoing, Purchaser agrees to enter into customary arrangements to cause all applicable Transmission Providers to perform all necessary Transmission System Studies. For sake of clarity, the Transmission System Studies shall not include any system upgrades required as a result of Seller's proposed interconnection of the Wind Project to the Delivery Point, all of which shall be Seller's responsibility and shall be performed at Seller's sole cost and expense. Purchaser shall promptly furnish to Seller the results of the Transmission System Studies, as each are received.

(c) Following the receipt of the results of all Transmission System Studies, and subject to the termination rights provided for in Section 2.16(d), Purchaser shall cause any system

upgrades, remedial action schemes, and related work required pursuant to the Transmission System Studies to be performed (the costs of such work, the “Transmission Upgrade Costs”), and Seller shall cooperate with Purchaser and the relevant Transmission Provider as necessary to allow any system upgrades, remedial action schemes, and related work required pursuant to the Transmission System Studies to be performed; provided, however, that as between the Parties the responsibility to fund such Transmission Upgrade Costs shall be allocated as follows:

(i) Purchaser shall be obligated to pay for all Transmission Upgrade Costs up to [REDACTED] Dollars (\$ [REDACTED]); and

(ii) Seller shall be obligated to fund (or reimburse Purchaser for) any and all Transmission Upgrade Costs in excess of [REDACTED] Dollars (\$ [REDACTED]).

(d) In the event that as of March 15, 2021, the Transmission System Studies (individually or in the aggregate) indicate that the aggregate amount of all Transmission Upgrade Costs is expected to be greater than [REDACTED] Dollars (\$ [REDACTED]), then Seller may, upon written notification to Purchaser, terminate this Agreement; provided that, any such notice of termination must be delivered no later than [REDACTED], after which time any such termination rights shall lapse and be of no further force or effect.

(e) In the event that on the earlier to occur of (i) receipt of the final results of all Transmission System Studies and (ii) [REDACTED] (such earlier date, the “Firm Transmission Determination Date”), the estimated date provided for in the Transmission System Studies (individually or in the aggregate) for the Firm Transmission Date is on or after [REDACTED], then the Milestones for the Gen-Tie Commencement of Construction, the Wind Project Commencement of Construction and the Commercial Operation Date (as set forth in Exhibit G) shall be extended on a day-for-day basis for each day of delay in the Firm Transmission Date beyond [REDACTED].

(f) In the event that the Firm Transmission Date is delayed for any reason, then until the Firm Transmission Date occurs Purchaser shall, if requested by Seller: (i) submit requests to BPA to redirect up to [REDACTED] MW of existing firm BPA transmission currently held by Purchaser from [REDACTED] to [REDACTED]; (ii) use commercially reasonable efforts to obtain up to [REDACTED] MW of non-firm transmission on the Colstrip Transmission System to match forecasted generation from the Wind Project; (iii) accept deliveries of Energy from the Wind Project up to [REDACTED] MW at [REDACTED] or the [REDACTED] contract point (either, the “Alternate Delivery Point”) if operationally feasible; and (iv) pay Seller at the Contract Rate applicable to the first Contract Year for any deliveries of Energy from the Wind Project pursuant to this Section 2.16(f). In no event may the total energy delivered to Purchaser in any hour (adjusted for transmission losses) pursuant to this Section 2.16(f) exceed the Maximum Contract Capacity. Further, Purchaser reserves the right to at any time reduce the amount of Energy accepted pursuant to this Section 2.16(f) for a given hour, day, or other period of time as necessitated by system conditions, or to address impacts on Purchaser’s utility operations due to the non-firm nature of the deliveries by Seller. Prior to Purchaser undertaking any of the actions described in Section 2.16(f)(i)-(iii), the Parties shall jointly develop an operational protocol detailing how the Parties will perform their respective obligations with respect to such action.

(g) If either Party terminates this Agreement pursuant to this Section 2.16, 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 or any indemnity obligations under Article 8 or the provisions of Section 11.1; and provided further, that Seller shall reimburse Purchaser for all Stranded Transmission Upgrade Costs arising as a result thereof. As used in this Agreement, “Stranded Transmission Upgrade Costs” means the costs and expenses incurred by Purchaser on or prior to the date of termination of this Agreement or arising as a result of the termination of this Agreement (e.g., breakage costs with any contractors retained to perform the transmission system upgrades and related work), in each case for the purposes of constructing the applicable transmission system upgrades, remedial action schemes, and related work identified in any Transmission System Study; provided, however, that in no event shall the amount of Stranded Transmission Upgrade Costs, in the aggregate, exceed [REDACTED] Dollars (\$ [REDACTED]).

(h) If Purchaser elects to proceed with incurring any Transmission Upgrade Costs prior to Seller’s issuance of Notice to Proceed and/or prior to receipt of the results of all Transmission System Studies, such circumstance shall not prevent Purchaser’s recovery of Stranded Transmission Upgrade Costs as and to the extent reimbursable by Seller hereunder).

**2.17 Certain Reporting Obligations.** Seller shall furnish to Purchaser from time to time, upon Purchaser’s reasonable request, and in any event not more than once annually, a report detailing the use by Seller of diverse businesses, including but not limited to women-, minority-, disabled-, and veteran-owned businesses.

### ARTICLE 3 TERM

**3.1 Term.** The “Term” of this Agreement shall commence on the Effective Date and continue until the expiration of the Delivery Term, unless earlier terminated in accordance herewith.

**3.2 Delivery Term.** The delivery term (the “Delivery Term”) shall commence on the Commercial Operation Date, and shall continue until the date that is twenty (20) Contract Years thereafter, subject to extension pursuant to Section 3.3.

**3.3 Renewal Term.** Purchaser shall have the option, but not the obligation, in Purchaser’s sole discretion, exercisable by written notice to Seller delivered no later than [REDACTED] to extend the Delivery Term for [REDACTED].

### ARTICLE 4 TIMELINE, DEFAULT AND TERMINATION

**4.1 Continued Development and Construction.** Following the Effective Date, Seller shall maintain development and construction efforts until the Commercial Operation Date. Such efforts shall include, but are not limited to: (a) securing of all necessary land use rights for the Site and the Gen-Tie Line and all necessary rights of access and rights of way for delivery of Energy to the Delivery Point; (b) completion of all environmental impact studies necessary for the

construction, operation, and maintenance of the Wind Project; (c) performance of all studies, payment of all fees, acquisition of all necessary approvals, and execution of all necessary agreements with all applicable Transmission Providers to schedule and deliver Energy to the Delivery Point; (d) acquisition of all Governmental Approvals and other necessary approvals for the construction, operation, and maintenance of the Wind Project; (e) achievement of all Milestones set forth in Section 4.4; and (f) achievement of a Commercial Operation Date on or before the Guaranteed Commercial Operation Date.

**4.2 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 construction, engineering, operation and maintenance of the Wind Project, 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 Wind Project required by the North American Electric Reliability Corporation 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.

**4.3 Project Configuration; Progress Reporting.**

(a) The preliminary configuration, design, and specifications of the Wind Project are set forth on Part I of Exhibit A attached hereto (the “Configuration Election”). Notwithstanding the foregoing, nothing in this Agreement or Exhibit A shall be deemed to limit the right of Seller to make any changes to the Wind Project it determines to undertake that are otherwise consistent with the terms of this Agreement; provided, however, that in no event shall (i) the nameplate capacity of the Wind Project be less than [REDACTED] 0) MWs (the “Minimum Target Nameplate Capacity”), (ii) the nameplate capacity of the Wind Project exceed [REDACTED] ) MWs or (iii) the Maximum Contract Capacity exceed [REDACTED] MWs.

(b) Commencing upon the end of the first calendar month after the Effective Date, Seller shall submit to Purchaser, no later than the tenth (10th) Business Day of each calendar month and, commencing with the week that is two (2) months prior to the projected Commercial Operation Date, on the first Business Day of each calendar week, in each such case until the Commercial Operation Date is achieved, progress reports in a form reasonably acceptable to Purchaser containing updates as to development and construction status and schedules, and providing, at a minimum, a safety report and project schedule analysis of actual progress compared to planned progress by major area. In lieu of providing such reports, Seller may at Purchaser’s request provide copies of any progress report or other similar document provided to any Lender regarding construction of the Wind Project. Seller shall deliver a complete copy of the Interconnection Agreement and documentation of the occurrence of the Gen-Tie Commencement of Construction and the Wind Project Commencement of Construction within five (5) Business Days of Seller’s receipt or the occurrence of the same.

(c) Purchaser shall have the right to monitor the development, construction, start-up, and testing of the Wind Project during normal business hours; provided, that Purchaser

does not unreasonably interfere with Seller's activities, and Seller shall comply with all reasonable requests of Purchaser with respect to the monitoring of these events. Seller shall cooperate in such physical inspections of the Wind Project as may be reasonably requested by Purchaser during and after completion of construction. All persons visiting the Wind Project on behalf of Purchaser shall comply with all of Seller's applicable safety and health rules and requirements that are provided or identified to such persons. Purchaser's technical review and inspection of the Wind Project shall not be construed as endorsing the design thereof or as any warranty of safety, durability, or reliability of the Wind Project.

#### **4.4 Schedule and Capacity Guarantees.**

(a) The Parties agree that certain milestones for the development and construction of the Wind Project, as set forth in the Milestone schedule attached hereto as Exhibit G ("Milestones") must be achieved in a timely fashion. Therefore:

(i) Within seven (7) days after completion of each Milestone, Seller shall provide Purchaser with notice along with accompanying documentation (including summaries of applicable agreements, Governmental Approvals, and certificates) to reasonably demonstrate the achievement of such Milestone.

(ii) If Seller misses the deadline date for any Milestone (as may be extended pursuant to Section 2.16(e) or Section 4.4(e)) Seller shall submit to Purchaser, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan") that describes in detail a reasonable course of action and plan (including accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) to achieve the missed Milestones and all subsequent Milestones; provided, however, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date and shall not relieve Seller of its obligation to pay liquidated damages as set forth in Section 4.4(b).

(b) In addition, in the event that Seller misses the deadline date for the Gen-Tie Commencement of Construction Guaranteed Milestone set forth in Exhibit G (as may be extended pursuant to Section 2.16(e) or Section 4.4(e)), Seller shall pay Purchaser daily delay liquidated damages in an amount per Day equal to [REDACTED] Dollars (\$ [REDACTED]) per MW multiplied by the Minimum Target Nameplate Capacity for each Day of delay until the Gen-Tie Commencement of Construction occurs. In the event that Seller misses the deadline date for the Wind Project Commencement of Construction Guaranteed Milestone set forth in Exhibit G (as may be extended pursuant to Section 2.16(e) or Section 4.4(e)), Seller shall pay Purchaser daily delay liquidated damages in an amount per Day equal to [REDACTED] Dollars (\$ [REDACTED]) per MW multiplied by the Minimum Target Nameplate Capacity for each Day of delay until the Wind Project Commencement of Construction occurs. For the avoidance of doubt, if Seller misses both the deadline date for the Gen-Tie Commencement of Construction and Wind Project Commencement of Construction Guaranteed Milestone, then Seller shall pay Purchaser daily delay liquidated damages in an amount per Day equal to [REDACTED] Dollars (\$ [REDACTED]) per MW multiplied by the Minimum Target Nameplate Capacity for each Day of delay during which both Guaranteed Milestones remain incomplete; provided that the aggregate amount payable by Seller pursuant to



this Section 4.4(b) shall not exceed [REDACTED] Dollars ([REDACTED]). Such liquidated damages shall be payable on a monthly basis, as set forth in Section 4.4(d). In the event that the Commercial Operation Date occurs on or before the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 2.16(e) or Section 4.4(e)), any liquidated damages paid pursuant to this Section 4.4(b) shall be refunded to Seller.

(c) In the event that the Commercial Operation Date has not occurred on or before the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 2.16(e) or Section 4.4(e)), Seller shall pay Purchaser daily delay liquidated damages in an amount per Day equal to [REDACTED] Dollars (\$ [REDACTED]) per MW multiplied by the Minimum Target Nameplate Capacity for each Day of delay beyond the Guaranteed Commercial Operation Date until the Commercial Operation Date has been achieved; provided, that the Seller shall be entitled to a credit against such damages in an amount equal to the aggregate amount of delay liquidated damages actually paid by Seller pursuant to Section 4.4(b). In the event that Seller achieves the Commercial Operation Date, if the aggregate amount of liquidated damages owing pursuant to this Section 4.4(c) is less than the aggregate amount of delay liquidated damages actually paid by Seller pursuant to Section 4.4(b), then after the application of the credit contemplated by the *proviso* in the preceding sentence Purchaser will refund to Seller the net amount remaining of the liquidated damages previously paid pursuant to Section 4.4(b). The aggregate amount payable by Seller pursuant to this Section 4.4(c) shall not exceed [REDACTED] Dollars ([REDACTED]). Without limiting Purchaser's rights and remedies in the case of any other Event of Default hereunder, the damages provided for in this Section 4.4(c) and the rights of Purchaser pursuant to Section 9.1(a)(viii) and Section 9.2(a) shall be the sole and exclusive remedy of Purchaser for any failure of Seller timely to achieve the Commercial Operation Date.

(d) In the event that Seller incurs delay liquidated damages under Section 4.4(b) or Section 4.4(c), Purchaser shall deliver to Seller an electronic invoice on a monthly basis detailing any amounts Purchaser is entitled to receive from Seller as delay damages for the prior month. Not more than twenty (20) Days after receipt of each such invoice, Seller shall pay to Purchaser, by wire transfer of immediately available funds to an account specified in writing by Purchaser 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. The provisions of Section 2.5(c) shall apply, *mutatis mutandis*, to any disputed amounts with respect to such invoices.

(e) The deadlines for Milestones and the Guaranteed Commercial Operation Date shall not be subject to adjustment, except as provided in this Section 4.4(e) and Section 2.16(e) (if applicable). The deadlines for Milestones and the Guaranteed Commercial Operation Date shall be extended as provided in this Section 4.4 and Section 2.16(e) (if applicable) on an equitable basis to the extent that Seller reasonably demonstrates to Purchaser that achievement of such Milestone by the date applicable thereto or the Commercial Operation Date by the Guaranteed Commercial Operation Date is delayed by a Permitted Extension, an event of Force Majeure or delays caused by Purchaser. However, in no event shall all such extensions exceed [REDACTED] [REDACTED] Days in the aggregate for any reason other than delays caused by Purchaser. For the sake of clarity, an adjustment to the Firm Transmission Date shall not constitute a delay caused by Purchaser or otherwise result in an adjustment of the Guaranteed Commercial Operation Date.

(f) Seller shall not be permitted to achieve Commercial Operation of the Wind Project unless the actual nameplate capacity of Turbines in Commercial Operation equals or exceeds ██████ percent (████%) of the Minimum Target Nameplate Capacity. If the Commercial Operation Date is achieved, but the actual nameplate capacity of Turbines in Commercial Operation is less than one hundred percent (100%) of the Minimum Target Nameplate Capacity, Seller shall make a one-time payment of liquidated damages to Purchaser in the amount of ██████ Dollars (████) for each MW that the actual nameplate capacity is below the Minimum Target Nameplate Capacity.

#### 4.5 *Early Termination.*

(a) In addition to any early termination rights set forth in Section 2.16, each of the following shall constitute an “Early Termination Event” hereunder:

(i) The Gen-Tie Commencement of Construction shall not have occurred on or before ██████ days after the deadline date for the Gen-Tie Commencement of Construction Guaranteed Milestone (as may be extended pursuant to Section 2.16(e) or Section 4.4(e));

(ii) The Wind Project Commencement of Construction shall not have occurred on or before ██████ days after the deadline date for the Wind Project Commencement of Construction Guaranteed Milestone (as may be extended pursuant to Section 2.16(e) or Section 4.4(e));

(b) Purchaser may, without further performance or financial obligations by either Party hereunder, terminate this Agreement effective upon written notice to Seller that an Early Termination Event pursuant to subsection 4.5(a) has occurred, provided that Purchaser gives Seller written notice of such termination within thirty (30) Days after the dates specified therein, after which time any such termination right shall lapse and be of no further force or effect.

(c) In the event of a termination pursuant to Section 4.5(b), 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 or any indemnity obligations under Article 8 or the provisions of Section 11.1, which provisions shall survive any termination of this Agreement. In the case of a termination pursuant to Section 4.5(b) as a result of an Early Termination Event pursuant to subsection 4.5(a), Purchaser shall be entitled to liquidated damages in an amount equal to ██████ Dollars (████), plus a reimbursement of all Stranded Transmission Upgrade Costs arising as a result thereof, which liquidated damages may be drawn from the Credit Support. The aggregate amount payable by Seller pursuant to this Section 4.5(c) shall not exceed ██████ Dollars (████).

(d) Prior to any termination pursuant to Section 4.5(b) and for a period of twelve (12) months thereafter, Seller will not engage in any of the following acts with regard to all or any portion of the Energy or Attributes from the Wind Project that would otherwise be the subject of this Agreement: (i) offer to sell the Energy or Attributes to any other Person, (ii) enter

into discussions or negotiations regarding a sale of the Energy or Attributes with any other Person, or (iii) enter into any kind of agreement regarding the sale of the Energy or Attributes with any other Person.

(e) In the event of a termination pursuant to Section 4.5(b), any Credit Support that has been provided pursuant to this Agreement shall be returned to Seller after the payment in full of all amounts due and owing pursuant to Section 4.5(c).

## ARTICLE 5 CREDIT SUPPORT

**5.1 Credit Support.** Seller shall be obligated to (a) maintain an Investment Grade Credit Rating or (b) furnish Credit Support in the form of either (i) a letter of credit in the aggregate amount of [REDACTED] Dollars ([REDACTED]), which letter of credit shall be subject to replenishment as provided in Section 5.2, or (ii) a combination of (A) a Guaranty in the aggregate amount of (1) [REDACTED] Dollars (\$ [REDACTED]) plus (2) until the Commercial Operation Date, an amount (not to exceed [REDACTED] Dollars ([REDACTED])) equal to the Transmission Upgrade Costs incurred by Purchaser and (B) until the Commercial Operation Date, a letter of credit in the aggregate amount of [REDACTED] Dollars ([REDACTED]), which letter of credit shall not be subject to replenishment pursuant to Section 5.2.

**5.2 Utilization of Credit Support.** Purchaser shall be entitled to draw upon and/or be paid from any Credit Support provided by the Seller for any obligation of the Seller arising under this Agreement that is not paid when due (subject to any applicable cure periods). If the Credit Support drawn upon is in the form of cash or a letter of credit, then Seller shall replenish the Credit Support to the amount provided for in Section 5.1 within ten (10) Business Days after Purchaser makes a draw on such Credit Support; provided, however, that (i) in no event shall Seller have any obligation to replenish the Credit Support prior to the Commercial Operation Date and (ii) the aggregate amount of any such replenishments of the Credit Support during the Term shall in no event exceed [REDACTED] Dollars ([REDACTED]), and Seller shall have no obligation to replenish the Credit Support in excess thereof.

**5.3 Seller Credit Event.** Upon the occurrence of a Seller Credit Event, Seller shall have ten (10) Business Days to remedy the situation by providing Credit Support meeting the requirements of Section 5.1. In the event that Seller fails to provide such replacement Credit Support or other credit assurance acceptable to the other Party within ten (10) Business Days of such Credit Event, then such other Party shall provide a written notice to such Party requiring such Party to remedy the situation as provided in this Section 5.3. In the event that such Party fails to provide such replacement Credit Support or other credit assurance acceptable to Purchaser within ten (10) Business Days of such written notice, then an Event of Default will be deemed to have occurred and Purchaser will be entitled to the remedies set forth in Article 9 of this Agreement, without the application of any cure periods.

**5.4 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 E 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 meeting the requirements of Section 5.1. Costs of a letter of credit shall be borne by Seller.

**5.5 Guaranty.** The Parties acknowledge that as of the date hereof Seller has proposed to utilize a guaranty from NextEra Energy Capital Holdings, Inc. (“NEECH”) for purposes of satisfying any Credit Support requirements under this Agreement that are capable of being satisfied through the provision of a Guaranty. Purchaser agrees that, notwithstanding anything to the contrary herein, a guaranty from NEECH in the form of Exhibit D hereto shall constitute Credit Support hereunder for so long as the following criteria are satisfied: (i) that certain Guarantee, dated as of [REDACTED] by NextEra Energy, Inc. (“NEE”), as successor in interest to FPL Group, Inc., in favor of NEECH, as successor in interest to FPL Group Capital Inc., shall remain in full force and effect and shall not have been amended in any manner that would reduce NEE’s liability or obligations thereunder to NEECH, and (ii) NEE shall maintain a Credit Rating by at least two Ratings Agencies equal to or better than “BBB” by S&P, “Baa2” by Moody’s or “BBB” by Fitch. Any failure of the conditions set forth in this Section 5.5 shall constitute a Seller Credit Event.

**5.6 Reporting Requirements.** Seller shall (i) provide Purchaser with audited financial statements, if such financial statements are not otherwise publicly available, or, if a guaranty has been provided by an Affiliate to satisfy the Credit Support obligations of Section 5.1, audited financial statements of such Affiliate (or, in the case where the Guaranty is provided by NEECH, audited financial statements from NEE), in any such case if such financial statements are not otherwise publicly available, no later than one hundred twenty (120) days after the end of each fiscal year during the Term of this Agreement, and (ii) promptly notify Purchaser of any Seller Credit Event.

## ARTICLE 6 DATA, METERING AND MEASUREMENT

### 6.1 Metering Equipment.

(a) Seller:

(i) Shall provide and 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;

(ii) Shall provide and maintain, at its cost, appropriate Meters and associated measuring, recording, and communication equipment that adhere to all

applicable Transmission Providers' 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. Seller's Primary Meter shall be located at the Delivery Point or on Seller's side of the Delivery Point. Except as provided in Section 6.2, Seller's Primary Meter shall be used for quantity measurements under this Agreement; and

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

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

(c) Purchaser may, at Purchaser's option and its sole cost and expense, upon thirty (30) Days' notice, request Seller to install and operate at the Wind Project check meters to measure Delivered Energy ("Purchaser's Check Meters"). To the extent practicable, Seller will install such meters outside of principal generating hours, but in the event operations are required to be curtailed during any period in order to install Purchaser's Check Meters, such period shall be deemed a Purchaser Voluntary Curtailment Period and all energy that would have otherwise been made available at the Delivery Point shall be treated as Deemed Energy for the purposes hereunder.

**6.2 Measurement of Delivered Energy.** Readings of Seller'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, Seller's Primary Meter is out of service or is determined, pursuant to Section 6.3, 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 6.3 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 6.3 to be registering inaccurately and (B) Purchaser's Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be registering inaccurately, by making a mathematical calculation of the Delivered Energy delivered to Purchaser based on the actual wind and availability data during such period over which Seller'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 6.3 to be registering inaccurately, (B) Purchaser's Check Meter is not installed, is out of service or is determined pursuant to Section 6.3 to be

registering inaccurately, and (C) the Parties reasonably determine that the mathematical calculation of the Delivered Energy delivered hereunder based on the actual wind and availability data is not reliable as to the period over which Seller'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.

### **6.3 Testing and Correction.**

(a) The accuracy of Seller's Primary Meter and 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 Sections 6.3(d)(v) and 6.3(d)(vi), Seller shall be responsible for all costs, including inspection and testing costs, in connection with Seller's Primary Meter and Seller's Check Meter and such cost is included in the Contract Rate.

(b) The accuracy of 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 Sections 6.3(d)(v) and 6.3(d)(vi), Purchaser shall be responsible for all costs, including inspection and testing costs, in connection with Purchaser'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 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 6.2;

(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 Wind Project for purposes of testing such Meter;

(v) Following the third-party testing of a Meter provided for in Section 6.3(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 6.2;

(vi) Following the third-party testing of a Meter provided for in Section 6.3(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 6.2; 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, the quantity of Delivered Energy measured since the previous test of such Meter shall be adjusted to correspond to the corrected measurements, pursuant to Section 6.2. 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.

#### **6.4 Meter Data and Records.**

(a) Seller shall provide Purchaser a report on the day immediately following the day that such data becomes available to Seller, indicating Seller's hourly delivery of Energy to Delivery Point and fifteen-minute interval data for the prior day and if the Parties participate in the Energy Imbalance Market, Seller's five-minute interval data. Seller's report of Energy delivery shall be sent by either: (i) a file attached to an e-mail sent to Purchaser; (ii) a secure FTP site to which Purchaser is granted access; or (iii) other method mutually acceptable to the Parties. Such file shall use comma separated value (CSV) format, or such other mutually acceptable format.

(b) Purchaser or its agent shall have the right to be present whenever Seller changes, repairs, inspects, tests, calibrates, or adjusts any of Seller's equipment used in measuring or checking the measurement of the amount of Energy delivered to the Delivery Point. Seller shall give at least two (2) weeks' notice to Purchaser in advance of calibrating the meters, and three (3) days' notice to Purchaser in advance of taking other action that would materially affect the accuracy of the meter unless Prudent Operating Practices necessitate executing such action upon shorter notice or unless otherwise mutually agreed by Seller and Purchaser. The records from the measuring equipment shall remain the property of Seller, but, upon request, Seller shall submit to Purchaser its records and charts, together with calculations therefrom, for inspection, verification and copying, subject to return within ten (10) Days after receipt thereof. Seller agrees to retain such records for not less than twenty-four (24) months after the expiration or termination of this Agreement.

**6.5 Wind Data.** Measuring equipment is installed at the Wind Project, which has the capability of measuring and recording wind data 24 hours per day. Seller shall provide Purchaser real time access to the data from the Wind Project's SCADA system.

**ARTICLE 7  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

**7.1 Seller's Representations and Warranties.**

(a) Seller represents and warrants as follows:

(i) Seller is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware, and authorized to conduct business in Montana;

(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) 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 4.2) 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;

(iv) 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, including any action required by Applicable Law;

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

(vi) 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;



(vii) 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;

(viii) Seller owns, and will at all times during the Term, own or otherwise have all rights necessary to produce and sell to Purchaser the Delivered 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 Wind Project, subject to any liens or encumbrances in favor of Lenders; and

(ix) Seller has obtained a discretionary conditional use permit from the City of Colstrip that is valid and continuing, and Seller further warrants that Seller will obtain all local permitting rights necessary for the construction, interconnection, commissioning, ownership, operation and maintenance of the Gen-Tie Line prior to the commencement of construction, interconnection, commissioning, ownership, operation or maintenance thereof, respectively.

## **7.2 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) 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 (except for those Governmental Approvals set forth in Section 4.2) 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;

(iv) 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, including any action required by Applicable Law;

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

(vi) 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

(vii) 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.

**7.3 Seller's Covenants.** Seller covenants that from the Commercial Operation Date through the expiration or termination of this Agreement:

(a) the Wind Project shall be owned, operated and maintained by Seller or its permitted designee or assignee in accordance with the standards set forth in Section 2.12;

(b) the operator of the Wind Project, whether Seller or its permitted designee or assignee, shall satisfy the technical requirements set forth in Section 11.2(a);

(c) Seller shall use Prudent Operating Practices and commercially reasonable efforts to maintain an aggregate nameplate capacity of all Turbines installed at the Wind Project at no less than the Minimum Target Nameplate Capacity; and

(d) Seller shall not repower the Wind Project during the Delivery Term, without the written consent of Purchaser. For the avoidance of doubt, any replacement of equipment at the Wind Project for maintenance purposes shall not be deemed a repower.

**7.4 Seller's Covenant Not to Discriminate Respecting Deliveries to Purchaser.**

(a) With respect to all purchases of energy from Phase I utilizing the Clearwater Systems, Seller shall schedule power and operate the Clearwater Systems in a non-discriminatory manner that will not prioritize delivery of energy or other products or services to any other Persons utilizing the Clearwater Systems over the delivery of Energy and Attributes from the Wind Project, up to the Maximum Contract Capacity, for Purchaser. Such non-discriminatory scheduling and operation shall apply to the Wind Project's pro rata share of energy transmission on the Gen-Tie Line with respect to any other capacity in Phase I of the Clearwater Systems.

(b) With respect to all other purchases of energy utilizing the Clearwater Systems, Seller shall schedule power and operate the Clearwater Systems so as to prioritize the delivery of Energy and Attributes from Phase I over and above the delivery of energy or other products or services to any other Persons utilizing the Clearwater Systems. For the avoidance of doubt, in the event that Seller's ability to export energy from the Clearwater Systems is limited, Seller shall deliver all available Energy and Attributes from the Wind Project to purchasers of Phase I on a pro rata, non-discriminatory basis in accordance with Section 7.4(a), until the

contractual obligations of all purchasers of Phase I capacity have been satisfied, even if such delivery means that all other Persons utilizing the Clearwater Systems or with which Seller has entered into an agreement for the sale and purchase of energy from the Clearwater Systems receive zero (0) Energy and Attributes from the Clearwater Systems. Seller shall require all other purchasers of energy or other products or services from the Clearwater Systems, as well as all other Persons owning or controlling (now or in the future, including as a result of any sale thereof by Seller or any of its Affiliates) all or any portion of the Clearwater Systems, to expressly acknowledge and agree to Purchaser's priority rights as set forth herein.

(c) Seller shall not construct or operate, or transfer the rights to construct or operate, any wind energy generation facilities other than Phase I within ten (10) miles of the Site.

### **7.5 Labor Resources.**

(a) To the extent possible and subject to any collective bargaining agreement of Seller or its Affiliates, if any, Seller shall make a good faith effort to endeavor to hire as direct or indirect subcontractors local workers (such as M/WBE/VETs) during construction of the Wind Project and as permanent employees or as direct or indirect subcontractors for the operation of the Wind Project and performance of Seller's obligations under the terms of this Agreement; provided and only to the extent that Seller or its Affiliate, as applicable, determines that (i) contracting with any such persons to perform such work is cost and schedule effective with respect to the construction and/or operation of the Wind Project, (ii) such persons satisfy Seller's or its Affiliate's, as applicable, then current qualifications, site safety policies, background screening, and (iii) such persons have obtained all applicable certifications that Seller or its Affiliates require.

(b) Seller shall make good faith efforts to endeavor to use during construction of the Wind Project apprenticeship labor as direct or indirect subcontractors to meet the Washington State Apprenticeship and Training Council requirements so as to allow Purchaser to qualify for the statutory one and two-tenths (1.2) multiplier for quantifying the Attributes from the Wind Project; provided and only to the extent that Seller or its Affiliate, as applicable, determines that (i) contracting with any such persons to perform such work is cost and schedule effective with respect to the construction of the Wind Project, (ii) such persons satisfy Seller's or its Affiliate's, as applicable, then current qualifications, site safety policies, background screening, and (iii) such persons have obtained all applicable certifications that Seller or its Affiliates require.

(c) Notwithstanding the foregoing, Seller shall be responsible to manage relations among Seller, its Affiliates, its contractors and subcontractors and other local workers.

## **ARTICLE 8 INDEMNIFICATION AND INSURANCE**

### **8.1 General Indemnity.**

(a) Indemnity by Seller. Subject to the provisions of Section 11.9, 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, without limitation, employees of the Parties) related to, arising from, or connected to the performance or non-performance by Seller of its obligations hereunder.

(b) Indemnity by Purchaser. Subject to the provisions of Section 11.9, 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 once sold and delivered to Purchaser at the Delivery Point, or (ii) any property damage, bodily injuries or death suffered by any third party Person (including, without limitation, employees of the Parties) related to, arising from, or connected to the performance or non-performance by Purchaser of its obligations hereunder.

(c) Comparative Negligence. The indemnification provisions of this Section 8.1 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 or other circumstance exists that has given or may reasonably be expected to give rise to a right of indemnification under this Section 8.1(d) (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 receipt of notice of such claim, suit, action or proceeding by such Indemnified Party. 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 [REDACTED] 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, or (iii) the claim is a criminal proceeding, 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, such Indemnified Party may, at its option, defend, settle or otherwise compromise or pay such action or claim.

(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.

## **8.2 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 [REDACTED] for each

accident; bodily injury by disease [REDACTED] ) policy limit; and bodily injury by disease [REDACTED] 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 [REDACTED] ) per occurrence, [REDACTED] [REDACTED] annual aggregate, and [REDACTED] products and completed operations aggregate;

(iii) Commercial Automobile Insurance with a minimum limit of [REDACTED] [REDACTED] combined single limit per accident with respect to bodily injury, property damage or death;

(iv) Umbrella Excess Liability Coverage with a minimum limit of [REDACTED] [REDACTED] per occurrence and [REDACTED] [REDACTED] 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;

(v) Builder's All-Risk Insurance with a minimum limit based on the probable maximum loss of the Wind Project; provided, that such Builder's All-Risk Insurance shall only be required during construction of the Wind Project;

(vi) Commencing on the Commercial Operation Date, All-Risk Property Insurance covering physical loss or damage to the Wind Project with minimum limits based on the total replacement cost of the Wind Project;

(vii) Professional Liability Coverage with an aggregate limit of not less than [REDACTED] which may be maintained by a consultant or contractor engaged by or on behalf of Seller; and

(viii) Business Interruption Insurance which amount shall cover Seller's continuing or increased expenses, resulting from full interruption for a period of six (6) calendar months and a time deductible of no more than sixty (60) days

(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, except as provided in Section 8.2(a)(v) or 8.2(a)(vi). 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 six (6) 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, except for the Professional Liability policy, 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-VII" or such other insurer as is reasonably acceptable to Purchaser.

(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 8.2 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 9 DEFAULTS AND REMEDIES**

### **9.1 *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/or maintain the Credit Support as required by ARTICLE 5 if such failure is not remedied within ten (10) Business Days after receipt by the Defaulting Party of written notice of such failure in accordance with Section 5.3;

(vi) Subject to Section 9.1(b) below, Seller's failure to cause the Wind Project to achieve an Availability Factor above [REDACTED] in any [REDACTED] consecutive Contract Years;

(vii) Subject to Section 9.1(b) below, Seller's failure to cause the Wind Project to achieve [REDACTED] of the Guaranteed Winter Period Output in any [REDACTED] consecutive Winter Periods;

(viii) Seller's failure to achieve the Commercial Operation Date within [REDACTED] Days of the Guaranteed Commercial Operation Date (as may be extended pursuant to the terms hereof); and

(ix) An assignment or transfer of this Agreement by either Party that is not expressly permitted under Section 11.2.

(b) With respect to the Events of Default described in Section 9.1(a)(vi) and Section 9.1(a)(vii), Seller shall have the right on one occurrence only during the Delivery Term to elect that, for the purposes of Section 9.1(a)(vi) and Section 9.1(a)(vii) only, the "Availability Factor" will be calculated by including in "Lost Energy" the amount of Energy that would have been Delivered Energy in such period, based on actual wind and availability data, but for the occurrence of a Transformer Failure. Such election may only be made once during the Delivery Term (i.e., on a collective basis for both Section 9.1(a)(vi) and Section 9.1(a)(vii)) and shall not affect the calculation of the Availability Factor for purposes of Section 2.13.

## 9.2 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 its 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 11.5 (the "Early Termination Date");

(ii) To suspend performance of its obligations and duties hereunder immediately upon delivering written notice to the Defaulting Party of its 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 9.3(a); provided, however, that with respect to any Seller Event of Default prior to the Commercial Operation Date, the aggregate amount of such Termination Payment shall not exceed the then outstanding amount of Seller Credit Support;

(vi) To exercise any rights pursuant to Section 5.2 to draw upon any Credit Support provided by the Defaulting Party (if applicable); and

(vii) To, subject to the express limitations on remedies set forth in this Agreement, 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 for Energy and Attributes received by Seller from third parties.

### **9.3 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 direct costs (including any brokerage costs, commissions, and other similar third party transaction costs and expenses) reasonably incurred by the Non-Defaulting Party as a result of the termination of this Agreement due to the Defaulting Party's default, which shall include, in the case where Purchaser is the Non-Defaulting Party, any Stranded Transmission Upgrade Costs, plus (iii) any unpaid amounts owing under this Agreement from the Defaulting Party to the Non-Defaulting Party which arose prior to the Early Termination Date, minus (iv) any unpaid amounts owing under this Agreement from the Non-Defaulting Party to the Defaulting Party. 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 excess, if any, of (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 scheduled expiration of the Term, over (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 Seller) during its term.

(c) In the case where the Defaulting Party is Seller, the "Market Value" shall be the excess, if any, of (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 Purchaser)

during its term, over (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 then scheduled expiration of the 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 9.3, (X) the quantity of energy used in the calculation shall be based upon reasonable assumptions regarding the future operation of the Wind Project 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, 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 [REDACTED] 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.

(f) In the event of termination pursuant to this Section 9.3, 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 or any indemnity obligations under Article 8 or the provisions of Section 11.1, which provisions shall survive any termination of this Agreement.

## ARTICLE 10 FORCE MAJEURE

**10.1 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 (or notify the other party verbally, followed promptly 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, it being agreed that if the affected Party fails to notify the other Party within such timeframe, 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 10, the affected Party shall only be entitled to relief for the period of time from and after the delivery of the applicable notice; (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. If any Force Majeure event prevents the delivery or receipt of the Delivered Energy for more than one hundred and eighty (180) 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 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 except on account of amounts 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.

## **10.2 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 failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(b) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, 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 subsection 10.2(b)(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 but not limited to transmission load relief events and minimum generation emergencies) declared by a 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 Wind Project or making it impossible for a 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 Wind Project;

(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.

## ARTICLE 11 MISCELLANEOUS

### 11.1 *Confidential Information.*

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Wind Project, 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 11.1.

(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 11.1 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 4.2; provided, that (a) each Party agrees to cooperate in good faith with the other Party 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) each Party shall provide reasonable notice to the other Party, prior to disclosure (if not prevented by 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 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 is required to be disclosed 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.

(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 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 using the same degree of care to protect the Confidential Information as the Receiving Party employs to protect its own information of like importance, but in no event less than a reasonable degree of care based on industry standards, 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 Disclosing Party shall provide notice thereof to the providing Party and make reasonable efforts to afford the providing 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, 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 Wind Project and this Agreement, the effect thereof on Purchaser's rates or investment return or similar matters; provided, that Purchaser shall (i) use commercially reasonable efforts to keep Seller informed with respect to such disclosures, (ii) 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 (iii) notify Seller promptly if it receives notice of any challenge to the request that such Confidential Information be afforded confidential treatment.

(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 the Disclosing Party has given notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 11.1(c)(v)), 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 Wind Project, as are necessary in order to fulfill such Party's obligations under this Agreement.

(g) The obligations of the Parties under this Section 11.1 shall remain in full force and effect for two (2) years following the expiration or termination of this Agreement.

**11.2 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 11.2(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. In addition, with respect to any proposed assignment by Seller, the assignor shall deliver or cause to be delivered to Purchaser evidence reasonably satisfactory to Purchaser of the technical and financial capability of the proposed assignee, it being understood that for any proposed assignee or transferee, technical capability may be demonstrated by a showing that the assignee or transferee or its Affiliates have a minimum of three (3) years' experience in the wind energy generation and operation business, including owning, controlling or operating for at least three (3) years a minimum of five hundred (500) MW of wind energy generation capacity.

(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 11.2(a) to the non-assigning Party, along with any other reasonably requested information. Within thirty (30) Days 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 term.

(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 (including any tax equity 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.

(d) In connection with any assignment of this Agreement by Seller for financing purposes, Purchaser shall, at Seller's expense, execute a customary consent or consents to assignment of this Agreement or estoppel certificates in favor of any Lenders for collateral purposes as may be reasonably required by such Lender, which shall include providing the Lenders with (i) (A) in the case of a debt financing, a consent in the form of Consent and Agreement attached hereto as Exhibit I-1 (the "Consent and Agreement") or (B) in the case of a tax equity

transaction, an estoppel certificate in the form of the Estoppel Certificate attached hereto as Exhibit I-2 (the “Estoppel Certificate”); provided that (i) Purchaser shall not be obligated to agree to any provisions that would adversely affect the rights or increase the duties of Purchaser under this Agreement and (ii) Seller shall be responsible at Purchaser’s request for Purchaser’s reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including attorneys’ fees.

(e) Except with respect to assignments pursuant to Section 11.2(c)(i) and Section 11.2(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; provided that, in the case of an assignment by Purchaser to an Affiliate pursuant to Section 11.2(c)(ii), that such Affiliate (A) is a regulated utility and has an Investment Grade Credit Rating and maintains such Investment Grade Credit Rating for the balance of the Term or (B) provides a guaranty from a regulated utility with an Investment Grade Credit Rating at the time of such assignment and maintains such Investment Grade Credit Rating for the balance of the Term.

(f) Seller shall be required to assign this Agreement to any Person that becomes the direct owner of all or substantially all of the assets comprising the Wind Project concurrently with the transfer of the applicable assets. For the sake of clarity, the foregoing shall not relieve Seller of the restrictions on assignment of this Agreement contained in this Section 11.2, and therefore if consent to the necessary assignment is required, any proposed transfer of all or substantially all of the assets comprising the Wind Project shall require the consent of Purchaser to the same extent and subject to the same terms and conditions as for the required assignment of this Agreement.

(g) Any assignment or transfer by either Party not expressly permitted under this Section 11.2 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.

**11.3 *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 11.2 above; provided, that the sale or issuance of equity interests in Seller to a Lender pursuant to any tax equity transaction entered into prior to the Commercial Operation Date shall not constitute a Change of Control of Seller.

**11.4 *Financing Liens.***

(a) Seller, without approval of Purchaser, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Wind Project, and Seller’s Interconnection Facilities (including any tax equity financing).

(b) Within ten (10) Business Days of making such encumbrance, Seller shall notify Purchaser in writing of the name, address, and telephone and facsimile numbers of each Lender to which Seller’s interest under this Agreement has been encumbered. Such notice shall



include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed.

(c) After giving Purchaser such initial notice, Seller shall promptly give Purchaser notice of any change in the information provided in the initial notice or any revised notice.

**11.5 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: Clearwater Energy Resources LLC  
700 Universe Boulevard  
Juno Beach, Florida  
Attn: Business Management  
Email: [emre.ergas@nexteraenergy.com](mailto:emre.ergas@nexteraenergy.com); [DL-NEXTERA-WEST-INTERNATIONAL-REGION@nee.com](mailto:DL-NEXTERA-WEST-INTERNATIONAL-REGION@nee.com)

with a copy to:

Clearwater Energy Resources LLC  
700 Universe Boulevard  
Juno Beach, Florida  
Attn: General Counsel  
Email: [NEER-General-Counsel@nexteraenergy.com](mailto:NEER-General-Counsel@nexteraenergy.com)

If to Purchaser: Puget Sound Energy, Inc.  
10885 NE 4th Street  
Bellevue, WA 98004-5591  
Attn: Ron Roberts, Vice President, Energy Supply  
Email: ron.roberts@pse.com  
Telephone: (425) 456-2442

with a copy to:

Puget Sound Energy, Inc.  
10885 NE 4th Street  
Bellevue, WA 98004-5591  
Attn: General Counsel  
Email: steve.secrist@pse.com  
Telephone: (425) 462-3178

**11.6 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.

**11.7 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 and/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 six (6) years after the date of the performance or after termination of this Agreement (the “Retention Period”).

(b) Seller shall provide to Purchaser and its representatives through the Retention Period, access at reasonable 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. 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 paragraph, each Party will be responsible for its own costs associated with any audit activity pursuant to this Section 11.7. 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.

**11.8 *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.

**11.9 *Waiver of Certain Damages; Certain Acknowledgments.*** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT (EXCEPT TO THE EXTENT INDEMNIFICATION PAYMENTS ARE MADE PURSUANT TO SECTION 8.1 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 8.1), 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 INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES 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, WITHOUT LIMITATION, 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.

**11.10 *Survival.*** Notwithstanding any provisions herein to the contrary, the obligations set forth in Article 8 and Sections 11.1, 11.5 and 11.6 through 11.26, 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.

**11.11 *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.

**11.12 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 11.6. Absent the agreement of the Parties to the proposed change, the standard of review for modifications or amendments to any section of this Agreement proposed by a Party (to the extent that any waiver as set forth in this Section is unenforceable or ineffective as to such Party), a non-Party, or FERC acting *sua sponte*, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956), and clarified by Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1 of Snohomish County, 128 S. Ct. 2733 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm’n, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine).

**11.13 Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York without regard its conflicts of laws provisions.

**11.14 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 may be brought in any of the courts of the United States of America located in the United States District Court for the Southern District of New York, having subject matter jurisdiction, or if such court lacks subject matter jurisdiction, then the state court for New York County, New York.

(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 11.5, 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.

**11.15 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.

**11.16 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 fifteen (15) 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 fifteen (15) 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.

**11.17 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, 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 11.17 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.

**11.18 No Third-Party Beneficiaries.** Except as set forth in Article 8 and in Sections 11.2, 11.3 and 11.9, 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.

**11.19 *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.

**11.20 *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 11.20.

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

**11.22 *Forward Contract.*** Each Party acknowledges and agrees 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 9.2 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.

**11.23 *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 a 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 a transmission provider (including if Purchaser becomes a Transmission Provider hereunder as a result of a pseudo-tie or other similar arrangement).

**11.24 *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.

**11.25 *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.

**11.26 *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.

CLEARWATER ENERGY RESOURCES LLC

By:

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

Name: Matthew S. Handel

Title: Vice President

PUGET SOUND ENERGY, INC.

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

Name: Ron Roberts

Title: Vice President, Energy Supply



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

CLEARWATER ENERGY RESOURCES LLC

By:

By: \_\_\_\_\_  
Name: Matt Handel  
Title: Vice President

PUGET SOUND ENERGY, INC.

By:  \_\_\_\_\_  
Name: Ron Roberts  
Title: Vice President, Energy Supply

## 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 directly or indirectly owns, controls, or holds with power to vote 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; (iii) any Person of which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interest or (iv) any Person that is under common control with such designated Person. NextEra Energy Partners, LP and their respective subsidiaries will be deemed to be Affiliates of Seller.

“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 Rosebud, Custer, Garfield, and Prairie Counties, Montana, 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.

“Alternate Delivery Point” shall have the meaning set forth in Section 2.16(f).

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

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

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

“Applicable Law” shall mean, with respect to any Person or the Wind Project, 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 Wind Project (as the case may be), including the standards and criteria of the North American Electric Reliability Corporation, FERC, and WECC.

“Availability Factor” means, for any relevant measurement period, the quotient, expressed as a percentage, obtained by the calculation set forth in Exhibit H.

“Balancing Authority” shall have the meaning set forth in the Glossary of Terms maintained by the North American Electric Reliability Corporation.

“Bankruptcy Code” shall have the meaning set forth in Section 11.22.

“BPA” shall mean the Bonneville Power Administration or any successor government agency.

“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.

“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 Wind Project, intended to value any aspect of the capacity of the Wind Project to produce Energy or Ancillary Services.

“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 any other Person, or in either case 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; provided, however, that any of the following shall not be deemed to constitute a Change of Control with respect to Seller:

- (a) any Change of Control of Seller’s Ultimate Parent Company;
- (b) any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Wind Project and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;
- (c) the direct or indirect transfer of shares of, or equity interests in, Seller to a tax equity investor;
- (d) transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; provided (i)(A) Seller’s Ultimate Parent Company retains the authority, directly or indirectly, to Control Seller (or if applicable, the surviving entity), or (B) a wholly-owned, indirect subsidiary of Seller’s Ultimate Parent Company operates the Wind Project, and (ii) if Seller is not the surviving entity, the transferee (A) executes and delivers to Purchaser a written agreement under which the transferee assumes in writing all of Seller’s duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and

conditions of this Agreement, and (B) satisfies the requirements of Section 5.1 of this Agreement;  
or

(e) a transfer of the Wind Project packaged with any of the following: (i) all or substantially all of the assets of Seller's Ultimate Parent Company, NextEra Energy Capital Holdings, Inc., and/or NextEra Energy Resources, LLC ("NEER"); (ii) all or substantially all of NEER's or Seller's Ultimate Parent Company's renewable energy generation portfolio; or (iii) all or substantially all of NEER's or Seller's Ultimate Parent Company's wind generation portfolio; provided, that in the case of each of (i), (ii) and (iii): (A) the transferee (1) executes and delivers to Purchaser a written agreement under which the transferee assumes in writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) satisfies the requirements of Section 5.1 of this Agreement; and (B) satisfies the requirements set forth in Section 11.2(a) of this Agreement.

"Claim Notice" shall have the meaning set forth in Section 8.1(d).

"Clearwater Systems" shall mean the Wind Project and all other power generating systems (whether or not owned by Seller) exporting power using Seller's Interconnection Facilities.

"Colstrip Transmission System" means the approximately 250 mile long 500kV transmission system stretching from the Delivery Point to the connection with the Eastern Intertie at the BPA substation located near Townsend, Montana.

"Code" shall mean the Internal Revenue Code of 1986, as amended or any successor thereto.

"Commercial Operation" shall mean, with respect to any Turbine, that the following conditions have been fulfilled: (i) the Turbine is able to generate electricity consistent with the specifications of the Turbine manufacturer; (ii) the Turbine has been satisfactorily tested and commissioned, as evidenced by an officer's certificate of Seller; (iii) all related facilities and rights have been completed or obtained, so as to allow for normal and continuous operation of such Turbine and delivery of Energy and Attributes for sale to Purchaser pursuant to this Agreement.

"Commercial Operation Date" shall mean, with respect to the Wind Project, that: (i) not less than ninety-five percent (95%) of the Minimum Target Nameplate Capacity of the Wind Project is ready for continuous generation and delivery of Energy and Attributes to the Delivery Point for sale to Purchaser pursuant to the terms of this Agreement; (ii) Seller shall have satisfied the requirements set forth in the Commercial Operation Certificate in the form attached as Exhibit G with respect to the Wind Project; (iii) Seller shall have delivered the true, correct, and complete Commercial Operation Certificate from Seller and a licensed professional engineer to Purchaser; and (iv) Seller shall have received all local, state, and federal Governmental Approvals and other approvals as may be required by Applicable Law for the construction, operation, and maintenance of the Wind Project.

"Confidential Information" shall have the meaning set forth in Section 11.1(a).

"Contract Rate" shall mean the rate set forth in Exhibit B.

"Contract Records" shall have the meaning set forth in Section 11.7(a).

“Contract Year” shall mean each year commencing on the commencement of the Delivery 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 date of commencement of the Delivery Term and ending at 2400 prevailing time on the day before the first anniversary of the commencement of the Delivery Term, and each anniversary thereof, or, in the case of the last Contract Year, the expiration of the Delivery Term, as applicable.

“Contractor” shall mean the engineering, procurement and construction contractor selected by Seller to design, build, and construct the Wind Project.

“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.

“Credit Rating” means, with respect to any entity, the corporate credit or issuer rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third-party credit enhancements) or, if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Rating Agencies.

“Credit Support” shall mean (A) a Guaranty, (B) cash or (C) a letter of credit in the form of Exhibit E hereto from a Creditworthy Bank.

“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 Ten Billion Dollars (\$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.

“Deemed Delivered Energy” shall mean, for any hour in a Purchaser Voluntary Curtailment Period, an amount of Energy (based on actual wind and availability data during such Purchaser Voluntary Curtailment Period) equal to the aggregate amount of Energy that would have been Delivered Energy in such hour, but for the Purchaser Voluntary Curtailment Order. For the avoidance of doubt, Deemed Delivered Energy in any hour shall not exceed the Maximum Contract Capacity.

“Deemed PTC Loss” shall mean, with respect to any Purchaser Voluntary Curtailment Period during which Production Tax Credits are being received with respect to Turbines at the Wind Project, an amount equal to (i) the applicable PTC Rate multiplied by (ii) an amount of MWhs equal to (A) the aggregate amount of MWhs of Deemed Delivered Energy arising during such Purchaser Voluntary Curtailment Period, reduced by the amount of such Deemed Delivered

Energy, if any, attributable to Turbines not then capable of generating PTCs less (B) the aggregate amount of MWhs of Energy generated during such Purchaser Voluntary Curtailment Period that are not Delivered Energy hereunder but which generate PTCs.

“Defaulting Party” shall have the meaning set forth in Section 9.2(a).

“Delivered Energy” shall mean all of the Energy produced by the Wind Project that Seller tenders at the Delivery Point, not to exceed Energy in excess of the Maximum Contract Capacity.

“Delivery Point” shall mean: (i) the point of interconnection between the Wind Project and the applicable Transmission Provider’s Transmission System, located at the 500kV busbar in the Colstrip substation; or (ii) for the limited purposes described in Section 2.16(f), the Alternate Delivery Point.

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

“Disclosing Party” shall have the meaning set forth in Section 11.1(a).

“Dispute” shall have the meaning set forth in Section 11.16.

“Early Termination Event” shall have the meaning set forth in Section 4.5(a).

“Eastern Intertie” means the 500kV transmission system owned by BPA and connecting from the substation near Townsend, Montana to the substation near Garrison, Montana.

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

“EIM BP” shall have the meaning set forth in Section 2.8(a).

“Energy” shall mean electric energy, 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 9.1(a).

“Expected Energy” has the meaning set forth in Exhibit H.

“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 or any successor government agency.

“Firm Transmission Date” shall mean the date that Purchaser has received all necessary firm transmission rights and all necessary system upgrades have been completed and are operational such that all Delivered Energy up to the Maximum Contract Capacity is physically able to be transmitted from the Delivery Point to Purchaser’s transmission system on a firm basis.

“Fitch” means Fitch Ratings, Ltd., or its successor, or, in the event that there is no such successor, a nationally-recognized credit rating agency.

“Force Majeure” shall have the meaning set forth in Section 10.2(a).

“Forced Outage” shall mean the shutdown or unavailability of the Wind Project, or a portion thereof, other than as a Planned Outage, Purchaser Voluntary Curtailment Period 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.

“Gen-Tie Line” shall mean the approximately one hundred (100) mile generator tie-line to be constructed for the transmission of the Energy from the Site to the Delivery Point.

“Gen-Tie Commencement of Construction” shall mean that Seller has issued a full notice to proceed or other similar notice to the contractor for the construction of the Gen-Tie Line and such contractor has mobilized at the Gen-Tie Line construction site to commence construction of the Gen-Tie Line, as evidenced by an officer’s certificate of Seller.

“Generation Attributes” means any and all present or future (known or unknown) attributes associated with the capability of the Wind Project to produce Energy or Ancillary Services or the generation of Energy by the Wind Project, including but not limited to 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 Wind Project or the Energy that Purchaser purchases from Seller hereunder, other than Capacity Attributes. Examples of Generation Attributes include, but are not limited to: 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 Energy sold and delivered to Purchaser hereunder.

“Governmental Approvals” shall have the meaning set forth in Section 4.2

“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 the North American Electric Reliability Corporation, FERC, and WECC.

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

“Guaranteed Commercial Operation Date” shall mean [REDACTED].

“Guaranteed Milestone” shall mean the following Milestones: Gen-Tie Commencement of Construction; Wind Project Commencement of Construction; and Commercial Operation Date.

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

“Guaranty” means a guaranty in the form of Exhibit D hereto from an Affiliate with an Investment Grade Credit Rating or as otherwise permitted by Section 5.5.

“Incentives” shall mean (i) any and all present or future (whether known or unknown) state and federal production tax credits (including, but not limited to any Production Tax Credits), investment tax credits and any other tax credits which are or will be generated by the Wind Project, 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 Wind Project or otherwise to renewable energy generators, or outright grants of money relating in any way to the Wind Project.

“Indemnified Party” shall have the meaning set forth in Section 8.1(d)(i).

“Indemnifying Party” shall have the meaning set forth in Section 8.1(d)(i).

“Interconnection Agreement” shall mean that certain Large Generator Interconnection Agreement, by and between Seller and Northwestern Corporation, Puget Sound Energy, Inc. (in its transmission capacity), Avista Corporation Portland General Electric Corporation and PacifiCorp, entered into on May 21, 2019, as may be amended, supplemented or replaced from time to time, in form and substance acceptable to Seller and Northwestern Corporation, Puget Sound Energy, Inc. (in its transmission capacity), Avista Corporation Portland General Electric Corporation and PacifiCorp.

“Investment Grade Credit Rating” shall mean a Credit Rating by at least two Ratings Agencies equal to or better than “BBB-” by S&P, “Baa3” by Moody’s or “BBB-” by Fitch.

“kW” shall mean a kilowatt of capacity.

“kWh” shall mean a kilowatt hour of Energy.

“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 (i) lending money or extending credit (including any financing lease, monetization of tax benefits, back-leverage or paygo financing or credit derivative arrangement) to Seller or to an Affiliate of Seller: (A) for the construction, interim or permanent financing or refinancing of the Wind Project; (B) for working capital or other ordinary business requirements of the Wind Project (including the maintenance, repair, replacement or improvement of the Wind Project); (C) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Wind Project; (D) for any capital improvement or replacement related to the Wind Project; or (E) for the purchase of the Wind Project and the related rights from Seller; and/or (ii) participating (directly or indirectly) as an equity investor in the Wind Project primarily in connection with the utilization of applicable federal tax credits or tax depreciation benefits associated with holding an ownership interest in the Wind Project; and/or (iii) participating as lessor under a lease finance arrangement relating to the Wind Project.



“Lost Energy” means, for any relevant period, and without duplication, the Deemed Delivered Energy in such period plus the amount of Energy that would have been Delivered Energy in such period, based on actual wind and availability data, but for (A) a System Curtailment Order, (B) an event of Force Majeure, (C) a Seller Compliance Curtailment, (D) Seller-initiated curtailments arising as a result of any Transmission Provider’s System unavailability or operation outside the defined voltage, frequency limits, or other operational parameters of the Wind Project’s generation equipment or (E) curtailments arising as a result of environmental conditions (e.g. icing) at the Wind Project that cause the Wind Project’s equipment to be inoperable, in whole or in part, in accordance Prudent Operating Practices, or would otherwise require the Wind Project’s generation equipment to operate outside of operational parameters of the Wind Project’s generation equipment. For sake of clarity, Seller shall not be entitled to claim credit for Lost Energy to the extent the events or circumstances resulting in what would otherwise be considered Lost Energy hereunder are the direct or indirect result of the negligence or fault of Seller or are otherwise caused by Seller.

“Market Price” shall mean the weighted average [REDACTED] Price in the applicable Contract Year or month, as applicable, as published by the Intercontinental Exchange, plus the average cost of current vintage Washington wind RECs; provided, that in no event shall the Market Price be less than the Contract Rate. To ascertain the Market Price Purchaser may consider, among other valuations, quotations from leading dealers in Energy and Attributes contracts, the settlement prices on established, actively traded power exchange and other commercially reasonable market information.

“Market Value” shall have the meaning set forth in Section 9.3.

“Maximum Contract Capacity” shall mean three hundred fifty (350) MWs as measured at the Delivery Point, as may be downwards adjusted in accordance with Section 2.16(b).

“Meter” shall mean a utility grade instrument and associated equipment meeting applicable electric industry standards as established by CAISO 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.

“Mid-Columbia” shall mean an area which includes points at any of the switchyards associated with the following four hydro projects: Rocky Reach, Rock Island, Wanapum and Priest Rapids. These switchyards include: Rocky Reach, Rock Island, Wanapum, Valhalla, Columbia, Midway and Vantage. Mid-Columbia shall also include points in the “NW Market Hub (NWH)” or “MIDCREMOTE” as defined by Bonneville Power Administration. For scheduling purposes, the footprint described above shall dictate the delivery point name for the then current WECC scheduling protocols. If the footprint changes during the Term, a mutually agreed upon footprint that describes an area containing the most liquidity for trading purposes shall apply.

“Mid-Columbia Day-Ahead Off-Peak Price” shall mean the price as published by the Intercontinental Exchange for the applicable day of delivery representing (i) Monday - Saturday Hour Ending 0100 – Hour Ending 0600 PPT and Hour Ending 2300 – Hour Ending 2400 PPT, (ii) Sundays, and (iii) NERC Holidays Hour Ending 0100 - 2400 PPT.

“Mid-Columbia Day-Ahead Peak Price” shall mean the price as published by the Intercontinental Exchange for the applicable day of delivery representing Monday - Saturday Hour Ending 0700 – Hour Ending 2200 PPT, excluding NERC Holidays.

“Mid-Columbia Flat Price” shall mean the Wind Project generation-weighted average of the Mid-Columbia Day-Ahead Off-Peak Prices and Mid-Columbia Day-Ahead Peak Prices for the applicable day of delivery.

“Milestones” shall have the meaning set forth in Section 4.4(a).

“Minimum Target Nameplate Capacity” shall have the meaning set forth in Section 4.3(a).

“Montana State and Local Sales and Use Taxes” means Montana state and local retail sales and use taxes imposed on the purchase and sale of Energy or Attributes under this Agreement, if any, and other substantially similar sales and use taxes imposed under Montana 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.

“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).

“NEE” shall have the meaning set forth in Section 5.5.

“NEECH” shall have the meaning set forth in Section 5.5.

“Non-Defaulting Party” shall have the meaning set forth in Section 9.2(a).

“Notice to Proceed” shall mean a full notice to proceed or other similar notice provided by Seller to Contractor for the construction of the Wind Project.

“OATT” means a Person’s FERC-approved open access transmission tariff (or equivalent tariff).

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

“Output Shortfall” shall mean, in a given Winter Period, the positive amount, if any, of the Guaranteed Winter Period Output minus Purchaser’s Output in such Winter Period.

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

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

“Permitted Extension” means, with respect any given Milestone or the Guaranteed Commercial Operation Date, a day-for-day extension to such Milestone or Guaranteed Commercial Operation Date due to Seller’s inability, as a result of events beyond Seller’s reasonable control, to either (i) interconnect the Gen-Tie Line with the Colstrip Transmission System or (ii) obtain any permit,

approval or consent of any owner or operator of the Colstrip Transmission System necessary for Seller to construct or operate the Wind Project in accordance with this Agreement.

“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.

“Phase I” shall mean the Wind Project and all other energy generation facilities with an aggregate nameplate capacity of no greater than seven hundred and fifty (750) MWs that are operated at the Site and utilize the Clearwater Systems to deliver energy, or other products or services related thereto.

“Planned Outage” shall mean the removal of equipment from service availability for inspection, maintenance and/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.

“Production Tax Credits” or “PTCs” shall mean the tax credits allowed for electricity produced from certain renewable resources pursuant to Section 45 of the Code.

“Prudent Operating Practices” shall mean the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for wind facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and standards of economy and expedition.

“PTC Rate” shall mean the per \$/MWh rate pursuant to Section 45 of the Code that would have applied to the Energy that is not generated by the Wind Project as a result of a Purchaser Voluntary Curtailment Order for purposes of determining the amount of Production Tax Credits that would have been allowed for such Energy, calculated on an After-Tax Basis.

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

“Purchaser Voluntary Curtailment Order” shall mean an instruction from Purchaser to Seller to reduce generation from the Wind Project by an amount and for a period of time as set forth in such instruction, for reasons unrelated to a System Curtailment Order or a Force Majeure event. For sake of clarity, (i) any period of time during which Seller’s ability to tender Energy from the Wind Project for delivery at the Delivery Point is curtailed as a result of Purchaser’s scheduling of the Wind Project pursuant to Section 2.10 or Section 2.14 in a manner intended to reduce deliveries of Energy by Seller under this Agreement for economic reasons shall be deemed a Purchaser Voluntary Curtailment Order and (ii) reliability curtailment orders issued by Purchaser’s

transmission function in its capacity as a Transmission Provider are System Curtailment Orders and not Purchaser Voluntary Curtailment Orders.

“Purchaser Voluntary Curtailment Period” shall mean the period during which a Purchaser Voluntary Curtailment Order prevents the delivery of Delivered Energy.

“Purchaser’s Check Meters” shall have the meaning set forth in Section 6.1(c).

“Purchaser’s Output” shall mean, for any Winter Period, the (i) Delivered Energy in such Winter Period, *plus* (ii) Lost Energy for such Winter Period.

“Receiving Party” shall have the meaning set forth in Section 11.1(a).

“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 Wind Project, including “renewable energy credits” and/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.

“Remedial Action Plan” shall have the meaning set forth in Section 4.4(a)(ii).

“Replacement Contract” shall mean a contract for the purchase and sale of energy produced from a wind 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 an output delivery point that is the same as or substantially similar to the Delivery Point hereunder, 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 11.7(a).

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

“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 Wind Project 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 Seller fails to satisfy its credit support obligations of Section 5.1 hereunder, including (i) any failure by Seller or, if applicable, its guarantor, to maintain an Investment Grade Credit Rating, (ii) any failure to satisfy the requirements of Section 5.5 if a Guaranty has been provided by NEECH, and (iii) if Credit Support has been provided in the form of a letter of credit, the bank issuing such letter of credit ceases to be a “Creditworthy Bank.”

“Seller’s Check Meters” shall have the meaning set forth in Section 6.1(a)(iv).

“Seller’s Designated Check Meter” shall mean Seller’s Check Meter, as adjusted to reflect the Energy delivered to the Delivery Point, designated from time to time by the Seller to act as a backup Meter pursuant to Section 6.2.

“Seller’s Interconnection Facilities” shall mean the interconnection facilities (including the Gen-Tie Line), control and protective devices and metering facilities required to connect the Wind Project with the Transmission Provider’s Transmission System up to, and on Seller’s side of, the Delivery Point.

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

“Seller’s Ultimate Parent Company” means NextEra Energy, Inc.

“Site” shall mean the real property located in Rosebud, Custer and Garfield Counties, Montana on which the Wind Project is located, as further described in Exhibit A.

“SQMD” shall mean Settlement Quality Meter Data.

“Stranded Transmission Upgrade Costs” shall have the meaning set forth in Section 2.16(g).

“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 a Transmission Provider’s Transmission System (e.g., a reliability coordinator, Balancing Authority, independent system operator, distribution operator, etc.) that requires a reduction in the generation of Energy from the Wind Project 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”, “system condition”, or other similar term (as defined in the 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 9.3(a).

“Test Energy” shall have the meaning set forth in Section 2.1(b).

“Transformer Failure” shall mean a complete failure of all of the generator step-up transformer or the 345kV to 500kV step-up transformer near the Colstrip substation or any associated high voltage equipment the procurement of which involves a similarly long lead time for any cause not arising from Seller’s failure to operate or maintain the Wind Project in a manner that is safe, prudent and reasonable and in accordance with: all Applicable Laws; the terms of this Agreement; the terms of any applicable operations and maintenance contract; Prudent Operating Practices; and Seller’s safety standards.

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

“Transmission Provider” shall mean an entity (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity under this Agreement anywhere from source to sink, and provides service under a tariff (including, in the event of a pseudo-tie of the Wind Project into Purchaser’s transmission system, or similar arrangement, Purchaser), or a regulatory body that regulates such entity. For the avoidance of doubt, “Transmission Provider” includes NorthWestern Energy, the Bonneville Power Administration, WECC and Purchaser (solely in its capacity as operator of a transmission system).

“Transmission Provider’s Transmission System” shall mean the facilities of a Transmission Provider for the transmission of Energy.

“Transmission System Studies” shall mean any system impact studies and facilities studies with NorthWestern Energy, the affected system study with Bonneville Power Administration, the WECC path rating process, and any other facilities and system studies necessary in respect of the proposed transmission of the Maximum Contract Capacity from the Delivery Point to Purchaser’s transmission system.

“Transmission Upgrade Costs” shall have the meaning set forth in Section 2.16(c).

“Turbine” shall mean a single wind turbine generating system, including the tower, pad, transformer and controller system, installed as part of the Wind Project.

“WECC” shall mean the Western Electricity Coordinating Council.

“Wind Project” shall mean the approximately three hundred fifty (350) MW electrical plant and equipment used to generate electricity utilizing renewable wind power to be located at the Site, including Turbines, necessary ancillary electrical, metering, SCADA and control equipment, Seller’s Interconnection Facilities and any and all additions, replacements or modifications hereto. The final design and specifications of the Wind Project will be chosen from the configurations set forth in Exhibit A hereto pursuant to the terms of Section 4.3(a) hereof. For sake of clarity, the specific Turbines included within the Wind Project shall be specified on Exhibit A hereto, and shall be separate and apart from any other wind power development projects that Seller may develop adjacent to the Site.

“Wind Project Commencement of Construction” shall mean that Seller has issued a full notice to proceed or other similar notice to Contractor for the construction of the Wind Project and such Contractor has mobilized at the Site to commence construction of the Wind Project, as evidenced by an officer’s certificate of Seller.

“Winter Period” means each period during the Delivery Term commencing at 0001 on the first day of November and ending at 2400 on the last day of February.

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

**EXHIBIT A**

**DESCRIPTION OF WIND PROJECT**

Seller is building and will own and operate a Wind Project with a nameplate capacity rating of approximately three hundred sixty (360) MWs to three hundred seventy-five (375) MWs. The Wind Project is located in Rosebud, Custer and Garfield Counties, Montana. The Wind Project will generate electrical power that will be sold wholesale. Seller shall deliver Energy and Attributes to Purchaser from certain the Wind Project, on the terms and conditions of the Agreement.

The Wind Project, as currently contemplated, will be comprised of approximately (i) 114 to 120 GE 2.82 MW wind turbines utilizing 127 meter rotor diameter blades on 114 meter hubs and (ii) 15 GE 2.5 MW wind turbines utilizing 116 meter rotor diameter blades on 90 meter hubs. The turbines are connected to a collector substation via 34.5 kV underground electric collection lines. The energy is stepped up to 345 kV via a transformer at the collector substation and to 500 kV prior to the Delivery Point.



**EXHIBIT B**

**CONTRACT RATE**

The “Contract Rate” shall be the rate determined as set forth in this Exhibit B, as follows:

1. The Contract Rate for Contract Years 1-20 shall be [REDACTED] Dollars [REDACTED] Cents ([REDACTED] per MWh) except and then only to the extent such rate is subject to adjustment as specifically provided in Section 2 and 3 of this Exhibit B.
2. If Purchaser exercises its option to extend the Delivery Term pursuant to Section 3.3, then the Contract Rate for Contract Years 1-25 shall be [REDACTED] Dollars [REDACTED] Cents [REDACTED] per MWh. Upon Seller’s receipt of Purchaser’s notice of election to exercise its option pursuant to Section 3.3, Seller shall recalculate all invoices previously issued utilizing a Contract Rate of [REDACTED] Dollars [REDACTED] Cents [REDACTED] per MWh, and on the next invoice issued after Purchaser exercises the option, Seller shall credit Purchaser the difference between the aggregate amount previously invoiced and the amount that would have been invoiced applying a Contract Rate of [REDACTED] Dollars [REDACTED] Cents ([REDACTED]).
3. In the event that as a result of a Change in Tax Law that prior to the Commercial Operation Date, Seller or the Wind Project becomes eligible for or entitled to, and Seller reasonably anticipates that it will receive any Additional Tax Benefits, Seller and Purchaser shall share on a 50%/50% basis the Additional Tax Benefit Amount associated with such Additional Tax Benefits by making an adjustment to the Contract Rate for the remainder of the Delivery Term. For purposes hereof:
  - a. Seller shall at all times retain all right, title and interest in any Additional Tax Benefits.
  - b. Seller shall provide Purchaser with written notice upon a Change in Tax Law resulting in Additional Tax Benefits no later than thirty (30) days after the occurrence thereof. Such notice shall include Seller’s good faith estimate of the Additional Tax Benefit Amount (including all calculations and assumptions in connection therewith), the effective date of the Change in Tax Law, a reasonable accounting of the Additional Tax Benefit Costs associated therewith, and the amount of the proposed adjustment to the Contract Rate in order to effectuate the 50%/50% sharing of the Additional Tax Benefit Amount over the course of the remaining Delivery Term, utilizing a straight line amortization thereof.
  - c. If requested by Purchaser, the Parties shall meet to discuss and address any disagreements with respect to the Seller’s estimate of the Additional Tax Benefit Amount or Seller’s proposed adjustment to the Contract Rate (it being understood that any disputes with respect thereto shall be subject to dispute resolution pursuant to Section 11.6).
  - d. The Contract Rate shall be adjusted in the first month following the effective date of the Change in Tax Law pursuant to which such Additional Tax Benefit is enacted, promulgated or issued.

- e. In the event that after the adjustment to the Contract Rate provided for herein and notwithstanding the Change in Tax Law, Seller reasonably determines that either (i) it will not receive at least [REDACTED] of the Additional Tax Benefit Amount estimated in clause (b) above, or (ii) it will receive more than [REDACTED] of the Additional Tax Benefit Amount estimated in clause (b) above, then Seller will provide Purchaser with a good faith estimate of the revised Additional Tax Benefit Amount (including all calculations and assumptions in connection therewith), and a revised amount of the proposed adjustment to the Contract Rate in order to effectuate the 50%/50% sharing of the revised Additional Tax Benefit Amount over the course of the remaining Delivery Term, utilizing a straight line amortization thereof. Subject to clause (c) above, the Contract Rate shall be adjusted in the first month thereafter.

4. Defined Terms:

- a. The capitalized terms in this Exhibit shall have the meanings set forth in the Agreement, including in the definitions attached and incorporated hereto as Annex I to the Agreement, whether singular or plural or in the present or past tense.
- b. For purposes of this Exhibit B, the following defined terms shall have the meanings set forth below:
- i. “Additional Tax Benefit Amount” means (i) the sum of the present values of all Additional Tax Benefits for which Seller or any investor in the Wind Project is eligible for or entitled to and reasonably anticipates that it will receive, minus (ii) the sum of the present values of all Additional Tax Benefit Costs with respect to such Additional Tax Benefits; provided that all present values shall be calculated using the Discount Rate.
  - ii. “Additional Tax Benefit Costs” means all costs resulting from any Additional Tax Benefits, including the costs associated with (i) any increases in the cost of the Turbines or any other materials used in construction of the Wind Project and (ii) any ancillary negative tax impacts resulting directly from the such Additional Tax Benefits.
  - iii. “Additional Tax Benefits” means any new Tax Benefits or changes to or extensions of existing Tax Benefits resulting from a Change in Tax Law enacted, promulgated or issued between the Effective Date and the Commercial Operation Date.
  - iv. “Change in Tax Law” means (a) any change in or amendment to the Code or another applicable federal income tax statute; (b) any change in, or issuance of, or promulgation of any temporary or final Treasury Regulations promulgated thereunder that would result in any change to the interpretation of the Code or existing Treasury Regulations; (c) any IRS guidance published in the Internal Revenue Bulletin and/or Cumulative Bulletin, notice, announcement, revenue ruling, revenue procedure, technical advice memorandum, examination directive or similar authority issued by the IRS Large Business and International division, or any published advice, advisory, or legal memorandum issued by IRS Chief Counsel, that applies,

advances or articulates a new or different interpretation or analysis of any provision of the Code, any other applicable federal tax statute or any temporary or final Treasury Regulation promulgated thereunder; or (d) any change in the interpretation of any of the authorities described in clauses (a) through (c) by a decision of the U.S. Tax Court, the U.S. Court of Federal Claims, a U.S. District Court, a U.S. Court of Appeals or the U.S. Supreme Court, that applies, advances or articulates a new or different interpretation or analysis of federal income tax law.

- v. “Discount Rate” means the sum of [REDACTED] ( [REDACTED] 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 date that such Additional Tax Benefit Amount is calculated, for United States government securities having a maturity reasonably equivalent to the then remaining Term of this Agreement.
- vi. “Tax Benefits” means (i) Production Tax Credits or (ii) any other federal tax credits associated with the construction or ownership of, or the production of electricity from, the Wind Project (including, in the case of clause (i) and (ii), any cash payable in lieu of such benefit).

**EXHIBIT C**

**RENEWABLE ATTESTATION FORM**

A. Reference is made to that certain Power Purchase Agreement (the “Agreement”) by and between Clearwater Energy Resources LLC, a Delaware limited liability company (“Seller”), and Puget Sound Energy, Inc., a Washington corporation (“Purchaser”), dated [\_\_\_\_\_]. 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, that:

1. Seller has sold, transferred and delivered to Purchaser, the Attributes associated with the Metered Energy produced by that certain wind generation facility with the aggregate nameplate capacity of approximately [three hundred sixty (360) MW<sub>AC</sub>] located in Rosebud, Custer and Garfield Counties, Montana (“Wind Project”); and

2. The Attributes scheduled on the table below:

- i. were generated by the Wind Project;
- ii. are solely and exclusively owned by Seller;
- iii. were sold only once by Seller exclusively to Purchaser;
- iv. have not been used by Seller or any third party, including to meet any other program requirements in this state, another state or jurisdiction including any federal, state, or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or renewable energy mandate;
- v. were not sold separately to any end-use customer or other wholesale provider other than Purchaser; and
- vi. were not used on-site to power any electrical generation equipment or for other on-site uses.

Generator Name	Generator ID Number	Fuel Type	#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)
		Wind			N/A	N/A	N/A	

C. This attestation may be disclosed by Seller and Purchaser to others, including any certification authority and 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 Clearwater Energy Resources LLC, I attest that the above statements are true and correct.

\_\_\_\_\_

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

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

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

**EXHIBIT D**

**FORM OF SELLER'S GUARANTY**

THIS GUARANTY, dated as of \_\_\_20\_\_\_, is issued by [GUARANTOR], a [STATE/CORPORATE TYPE], ("Guarantor") in favor of Puget Sound Energy, Inc., a Washington corporation ("Guaranteed Party"). Clearwater Energy Resources LLC, a Delaware limited liability company, ("Obligor") is an indirect subsidiary of Guarantor.

**RECITALS**

- A. Obligor and Guaranteed Party have entered into a Power Purchase Agreement dated as of \_\_\_, 20\_\_ (the "Agreement").
- B. This Guaranty is delivered to Guaranteed Party by Guarantor pursuant to the Agreement.

**AGREEMENT**

1. Guaranty of Obligations Under the Agreement.

(a) For value received, Guarantor hereby absolutely, unconditionally and irrevocably, subject to the express terms hereof, guarantees the full and timely payment when due of all payment obligations, whether now in existence or hereafter arising, by Obligor to Guaranteed Party pursuant to the Agreement (the "Obligations"). This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all such Obligations may be or become discharged or uncollectible in any bankruptcy, insolvency or other similar proceeding, or otherwise unenforceable.

(b) Maximum Guaranteed Amount. Notwithstanding anything to the contrary herein, Guarantor's aggregate obligation to Guaranteed Party hereunder is limited to the aggregate amount of (i) [REDACTED] Dollars ([REDACTED]) plus (ii) until the Commercial Operation Date, an amount (not to exceed [REDACTED] Dollars ([REDACTED]) equal to the Transmission Upgrade Costs incurred by Guaranteed Party (the "Maximum Guaranteed Amount") (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to the Guaranteed Party, pursuant to a demand made upon Guarantor by Guaranteed Party or otherwise made by Guarantor pursuant to its obligations under this Guaranty including any indemnification obligations, shall reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis) and shall not either individually or in the aggregate be greater or different in character or extent than the obligations of Obligor to Guaranteed Party under the terms of the Agreement. IN NO EVENT SHALL GUARANTOR BE SUBJECT TO ANY CONSEQUENTIAL, EXEMPLARY,

EQUITABLE, LOSS OF PROFITS, PUNITIVE, TORT OR OTHER SIMILAR DAMAGES UNLESS OBLIGOR IS OBLIGATED THEREFORE PURSUANT TO THE AGREEMENT.

2. Payment; Currency. All sums payable by Guarantor hereunder shall be made in freely transferable and immediately available funds and shall be made in U.S. dollars. If Obligor fails to pay any Obligation when due, the Guarantor will pay that Obligation directly to Guaranteed Party within twenty (20) days after written notice to Guarantor by Guaranteed Party. The written notice shall provide a reasonable description of the amount of the Obligation and explanation of why such amount is due.

3. Waiver of Defenses. Except as set forth above, Guarantor hereby waives notice of acceptance of this Guaranty and of the Obligations and any action taken with regard thereto, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of the Obligations, suit, or the taking of and failing to take other action by Guaranteed Party against Obligor, Guarantor or others and waives any defense of a surety. Without limitation, Guaranteed Party may at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (a) make any change to the terms of the Obligations; (b) take or fail to take any action of any kind in respect of any security for the Obligations; (c) exercise or refrain from exercising any rights against Obligor or others in respect of the Obligations or (d) compromise or subordinate the Obligations, including any security therefor. Notwithstanding the foregoing, Guarantor shall be entitled to assert rights, setoffs, counterclaims and other defenses which Obligor may have to performance of any of the Obligations and also shall be entitled to assert rights, setoffs, counterclaims and other defenses that the Guarantor may have against the Guaranteed party, other than defenses based upon lack of authority of Obligor to enter into and/or perform its obligations under the Agreement or any insolvency, bankruptcy, reorganization, arrangement, composition, liquidation, dissolution or similar proceeding with respect to Obligor.

4. Term. This Guaranty shall continue in full force and effect until the earlier of (a) satisfaction in full by Obligor of all of the Obligations under the Agreement and (b) [insert date that is twelve (12) months after the end of the Term]. Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise. Guaranteed party shall return this original executed document to Guarantor within twenty (20) days of termination of this Guaranty.

5. Subrogation. Until all Obligations are indefeasibly performed in full, but subject to Section 6 hereof, Guarantor hereby waives all rights of subrogation, reimbursement, contribution and indemnity from Obligor with respect to this Guaranty and any collateral held therefor, and Guarantor hereby subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations.

6. Expenses. Guarantor agrees to reimburse Guaranteed Party on written demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Guaranteed

Party in enforcing its rights under this Guaranty in the maximum aggregate amount of [REDACTED] [REDACTED]. Notwithstanding the foregoing, the Guarantor shall have no obligation to pay any such costs or expenses if, in any action or proceeding brought by Guaranteed Party giving rise to a demand for payment of such costs or expenses, it is finally adjudicated that the Guarantor is not liable to make payment under Section 2 hereof.

7. Assignment. Guarantor may not assign its rights or delegate its obligations under this Guaranty in whole or part without written consent of Guaranteed Party, *provided, however*, that Guarantor may assign its rights and delegate its obligations under this Guaranty without the consent of Guaranteed Party if (a) such assignment and delegation is pursuant to the assignment and delegation of all of Guarantor's rights and obligations hereunder, in whatever form Guarantor determines may be appropriate, to a partnership, limited liability company, corporation, trust or other organization in whatever form that succeeds to all or substantially all of Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, *provided*, such entity has an Investment Grade Rating by either Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc. ("S&P") or (b) such assignment and delegation is made to an affiliate of Guarantor that has an Investment Grade Rating by either Moody's or S&P. For purposes of this Section 7, "Investment Grade Rating" means a minimum credit rating for senior unsecured debt or corporate credit rating of BBB- by S&P or Baa3 by Moody's. Upon any such delegation and assumption of obligations and, if required, the written consent of Guaranteed Party (which consent shall not be unreasonably withheld, conditioned or delayed), Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. Guaranteed Party may assign its rights or benefits under this Guaranty to any person who has taken proper assignment of the Agreement in accordance with Section 11.2 of the Agreement.

8. Non-Waiver. The failure of Guaranteed Party to enforce any provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce same (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation). All remedies of Guaranteed Party under this Guaranty shall be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. The terms and provisions hereof may not be waived, altered, modified or amended except in a writing executed by Guarantor and Guaranteed Party.

9. Entire Agreement. This Guaranty and the Agreement are the entire and only agreements between Guarantor and Guaranteed Party with respect to the guaranty of the Obligations of Obligor by Guarantor. All agreements or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

10. Notice. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by Guarantor or by Guaranteed Party shall be in writing and



shall be deemed received (a) if given personally, when received, (b) if mailed by certified mail (postage prepaid and return receipt requested), five (5) days after deposit in the U.S. mails, or (c) if given via overnight express courier service, when received or personally delivered, in each case with charges prepaid and addressed as follows (or such other address as either Guarantor or Guaranteed Party shall specify in a notice delivered to the other in accordance with this Section):

If to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Guaranteed Party:

Puget Sound Energy, Inc.  
10885 NE 4th Street  
Bellevue, WA 98004-5591  
Attn: Ron Roberts, Vice President, Energy Supply  
Email: ron.roberts@pse.com  
Telephone: (425) 456-2442

11. Counterparts. This Guaranty may be executed in counterparts, each of which when executed and delivered shall constitute one and the same instrument.

12. Governing Law; Jurisdiction. This Guaranty shall be governed by and construed in accordance with the laws of the state of New York without giving effect to principles of conflicts of law. Guarantor and Guaranteed Party agree to the non-exclusive jurisdiction of any federal district court located in Multnomah County, Oregon over any disputes arising or relating to this Guaranty.

13. Limitation on Liability. Except as specifically provided in this Guaranty, Guaranteed Party shall have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Obligor in the Agreement.

14. Waiver of Jury Trial. GUARANTEED PARTY AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION

IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty as of the date first set forth above.

**[GUARANTOR]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and agreed:

**Puget Sound Energy, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT E**

**FORM OF 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:**

[ ]  
[ ]  
[ ]

Attn: Credit Department

Dear Madam or Sir:

We hereby establish for the account of [ ] (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 purportedly signed by an authorized officer of Beneficiary, dated the date of presentation and (b) the original of the letter of credit and all amendments (if any) (or photocopy of the original for partial drawings) and presented at our office located at [ , attention \_\_\_] (or 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 purportedly signed by an authorized officer of Beneficiary, accompanied by this letter of credit and all amendment, if any, 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, 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. However, in no event shall this Letter of Credit be automatically extended beyond \_\_\_\_\_ (the "Final Expiration Date").

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.D. \_\_\_\_\_ [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 (USD\_) 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 USD \_\_\_\_\_, 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: \_\_\_\_\_



**EXHIBIT F**

**FORM OF COMMERCIAL OPERATION CERTIFICATE**

The undersigned, Clearwater Energy Resources LLC (“Seller”) [and \_\_\_\_\_ (“Licensed Professional Engineer”)] make[s] the following certifications to Puget Sound Energy, Inc. (“Purchaser”), dated as of \_\_\_\_\_. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Power Purchase Agreement dated \_\_\_\_\_ between Seller and Purchaser (the “Agreement”).

**Seller hereby certifies that:**

1. The final nameplate capacity of the Wind Project is [\_\_\_] MW<sub>AC</sub>.
2. Except for punch list items that would not materially affect the performance, reliability, for safe operation of the Wind Project, the same has been erected and installed by the respective suppliers (including the Contractor, the “Suppliers”), has been completed in accordance with the material applicable specifications under the respective supply agreements, and is ready for continuous generation and delivery of Energy to the Delivery Point in compliance with all Applicable Laws and Governmental Approvals.
3. Except for punch list items that would not materially affect the performance, reliability, or safe operation of the Wind Project, as required under the Agreement, all requirements necessary to achieve commercial operability thereof have been substantially completed.
4. Seller’s Interconnection Facilities have been completed in accordance with applicable specifications, tariffs, Laws and Governmental Approvals to enable power generated by the Wind Project to be received at the Delivery Point.
5. Seller has obtained all Governmental Approvals necessary for the Wind Project to continuously generate and deliver Energy to the Delivery Point and the same is in compliance with all such Governmental Approvals and all other Applicable Laws in all material respects.
6. All necessary arrangements for the prudent and proper operation and maintenance of the Wind Project have been put in place and are in full force and effect.
7. Seller has a valid leasehold or real property interest in the Site and the Gen-Tie Line for a term of at least [\_\_\_] years from the Commercial Operation Date.

**Licensed Professional Engineer certifies that:**

1. We have read the Agreement, the supply agreements, the engineering, procurement and construction contract, and we understand the requirements for Commercial Operation under the Agreement, the specifications and performance testing requirements under the supply agreements, and the requirements for commercial operation and/or substantial completion under the engineering, procurement and construction and contract.

2. We have reviewed the material and data made available to us by the Seller, the Suppliers, and the Contractor for the Wind Project.
3. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Wind Project and in the course of this review we have not discovered any material errors or omissions in the work performed to date.
4. We have reviewed the certifications of Seller above, and find the representations provided to be correct in all material respects.
5. We have reviewed all Governmental Approvals and permits identified by the Seller as being required for the construction and operation of the Wind Project and are of the opinion that the same is in compliance in all material respects with the environmental and technical requirements contained therein.
6. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of [\_\_\_\_\_], Commercial Operation of the Wind Project has occurred as defined in the Agreement.

Executed this [\_\_] day of [\_\_\_\_], 202[\_\_]

**SELLER**

Clearwater Energy Resources LLC  
a Delaware limited liability company

By:

Name:

Title:

**LICENSED PROFESSIONAL ENGINEER**

***[Name of Licensed Professional Engineer]***

a \_\_\_\_\_

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

Name:

Title:

**ACCEPTED BY PUGET SOUND ENERGY, INC.**

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

Name:

Title:

Date

**EXHIBIT G**

<b>MILESTONE</b>	<b>DATE</b>
Gen-Tie Commencement of Construction	[REDACTED]
Wind Project Commencement of Construction	[REDACTED]
Energization	[REDACTED]
Guaranteed Commercial Operation Date	[REDACTED]

## **EXHIBIT H**

### **AVAILABILITY FACTOR AND EXPECTED ENERGY**

#### Section 1. Definitions.

Capitalized terms used in this Exhibit H and not defined in this Exhibit will have the meaning assigned in Annex I.

“Annual Report” is defined in Section 3.2 of this Exhibit.

“Availability Factor” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the Credited Output in the relevant period, divided by (ii) the Expected Energy in the relevant period.

“Available Resource” means the wind speed to be used to determine Expected Energy and Lost Energy, as determined pursuant to Section 2.1 of this Exhibit.

“Credited Output” means, for any relevant period the (i) Delivered Energy in such period plus (ii) the Lost Energy in such period.

“Expected Energy” means an amount for any given relevant period calculated by applying the Available Resource to the Reference Power Curve. The calculation shall assume that the applicable Turbine is one-hundred percent (100%) available and performs as designed by the manufacturer, specifically relative to the Reference Power Curve. Electrical and Turbine power curve reported losses as reported in the Wind Resource Assessment shall be applied to the calculation. The calculation of the Expected Energy shall include a correction for the air density.

“Quarterly Report” is defined in Section 3.1 of this Exhibit.

“Reference Power Curve” means the reference power curve used in the Wind Resource Assessment. The Reference Power Curve shall be the Turbine manufacturer’s power curve, in the first Contract Year, a copy of which shall be provided to Purchaser ten (10) Business Days following the Commercial Operation Date, and Seller’s power curves thereafter, which updated power curves shall be verified by a third party and provided to Purchaser ten (10) Business Days following the end of each Contract Year.

“Wind Resource Assessment” shall mean the wind resource assessment report utilized by the Seller or the Lenders to determine the estimated annual generation of the Wind Project, a copy of which shall be provided to Purchaser ten (10) Business Days following the Commercial Operation Date, and ten (10) Business Days following the end of each Contract Year.

#### Section 2. Calculation of Available Resource and Lost Energy.

2.1. The Available Resource shall be calculated on a Turbine by Turbine basis on ten (10) minute intervals as follows:

a. First, if the Turbine-mounted anemometer or other industry-approved remote sensing technology for the Turbine in question is operating without error, the wind speed as measured by such equipment.

b. If the Turbine-mounted anemometer or other industry-approved remote sensing technology for the Turbine in question is not available, then the closest comparable Turbine-mounted anemometer or other industry-approved remote sensing technology that is operating without error shall apply.

c. If the closest comparable Turbine-mounted anemometer or other industry-approved remote sensing technology is not available, then the Available Resource shall be the average wind speed at the Wind Project, as determined by averaging the wind speed measured by the Turbine-mounted anemometers then available, or by other industry-approved remote sensing technology then available, across the Wind Project.

2.2. Lost Energy shall be calculated on a Turbine by Turbine basis on ten (10) minute intervals as follows:

a. First, if the nearest comparable Turbine is producing Energy without curtailment or error, the amount of Energy produced by such Turbine (less any Energy produced by the Turbine for which Lost Energy is being calculated) shall be used for the applicable measurement period.

b. If the nearest comparable Turbine is not producing Energy without curtailment or error during such measurement period, the next most comparable Turbine that is producing Energy without curtailment or error shall be used for determining Lost Energy.

c. If neither of the foregoing comparable Turbines is producing Energy without curtailment or error during such measurement period, then Lost Energy shall be calculated by applying the Available Resource in such measurement period to the Reference Power Curve.

2.3. No later than ten (10) Business Days following the Commercial Operation Date, Seller shall furnish to Purchaser a table detailing Seller's reasonable determination of the nearest and next nearest comparable Turbines for each Turbine in the Wind Project and which Seller proposes to use as needed for purposes of calculating the Available Resource and the Lost Energy.

### Section 3. Reporting.

3.1. From and after the Commercial Operation Date, Seller shall calculate on an hourly basis the Expected Energy and the Credited Output in such hour, and on a quarterly basis no later than the tenth (10th) day after the end of each quarterly period during a Contract Year, Seller shall furnish Purchaser with a report detailing the foregoing for the prior quarter and calculating the Availability Factor for such quarterly period (the "Quarterly Report"). If requested by Purchaser, Seller shall also furnish detailed backup data supporting the calculations in the Quarterly Report, including the hour counters and event code reporting on a Turbine by Turbine basis as returned by

the turbine controllers and SCADA system for the Wind Project and any adjustments made to such hour counter and event code reporting by Seller. If requested by Purchaser, the Parties shall meet to discuss and use commercially reasonable efforts to agree upon any reasonably proposed adjustments to the various hour counters and event codes returned by the Turbine controllers and the SCADA system, with any Disputes arising therefrom being subject to Section 11.16.

3.2. No later than the thirty (30) days after each Contract Year, Seller shall deliver to Purchaser a report detailing the Expected Energy, the Credited Output and the Availability Factor for such Contract Year and the amount of any Availability Damages, if any, due to Purchaser (the “Annual Report”). If requested by Purchaser, Seller shall also furnish detailed backup data supporting the calculations in the Annual Report, including the hour counters and event code reporting on a Turbine by Turbine basis as returned by the turbine controllers and SCADA system for the Wind Project and any adjustments made to such hour counter and event code reporting by Seller. If requested by Purchaser, the Parties shall meet to discuss and use commercially reasonable efforts to agree upon any reasonably proposed adjustments to the various hour counters and event codes returned by the Turbine controllers and the SCADA system, and Seller’s calculation of the Availability Factor for such Contract Year, with any Disputes arising therefrom being subject to Section 11.16.

3.3. All reports and data contemplated by this Section 3 shall be furnished in their native readable format (e.g., while providing a pdf is permissible, it shall be accompanied by the original report and data in its native software format such that it is capable of being read electronically by Purchaser).

**EXHIBIT I-1**

**FORM OF CONSENT AND AGREEMENT**

**CONSENT AND AGREEMENT**  
**(PUGET SOUND ENERGY, INC.)**  
**(POWER PURCHASE AGREEMENT)**

This CONSENT AND AGREEMENT (this “Consent”), dated as of \_\_\_\_\_, \_\_\_\_\_, is executed by and among PUGET SOUND ENERGY, INC., a corporation organized under the laws of the State of Washington (the “Contracting Party”), Clearwater Energy Resources LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Project Owner”), and [ \_\_\_\_\_ ], as collateral agent (in such capacity, together with its successors and permitted assigns, the “Collateral Agent”) for the benefit of the Secured Parties as defined in the Credit Agreement referred to below.

A. The Project Owner owns, operates and maintains a three hundred fifty (350) MW wind power generation facility located in Rosebud, Custer and Garfield Counties, Montana (the “Project”);

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”);

C. [ \_\_\_\_\_ ], LLC (the “Issuer”), the Project Owner, [ \_\_\_\_\_ ], LLC, as guarantors, the Secured Parties as defined therein, [U.S. Bank National Association], as Administrative Agent, Collateral Agent and Depositary Agent and certain other parties have entered into a Credit Agreement, dated as of [ \_\_\_\_\_ ], 20[ \_\_\_\_\_ ] (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “[Credit Agreement]”), providing for [ \_\_\_\_\_ ] described therein;

D. Pursuant to the Assignment and Security Agreement, dated as of [ \_\_\_\_\_ ], 20[ \_\_\_\_\_ ] (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Security Agreement”), among the Issuer, the Project Owner and [ \_\_\_\_\_ ] (each a “Pledgor”, and collectively, the “Pledgors”) and the Collateral Agent for the benefit of the Secured Parties, the Project Owner has assigned all of its right, title and interest (but not its obligations, liabilities or duties) in, to and under the Assigned Agreement to the Collateral Agent as security for the payment and performance by the Pledgors of their obligations under the Credit Agreement and for other obligations owing to the Secured Parties.

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



1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and collateral assignment of all right, title and interest of the Project Owner in, to and under the Assigned Agreement by the Project Owner to the Collateral Agent for the benefit of the Secured Parties pursuant to the Security Agreement.

2. Representations and Warranties. As of the date hereof, the Contracting Party represents and warrants as follows:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by written waiver or written consent) to the Assigned Agreement.

(b) No Other Agreements. [Except as described in Schedule I hereto,] there are no agreements, arrangements, understandings or dealings entered into between the Contracting Party and the Project Owner relating to the Project other than the Assigned Agreement.

(c) No Previous Assignments. The Contracting Party affirms that it has no written notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and collateral assignment to the Collateral Agent referred to in Section 1 above.

(d) No Termination Event. After giving effect to the pledge and collateral assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, to the Contracting Party's actual knowledge, there exists no event or condition (a "Termination Event") that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement.

(e) Governmental Approvals. The execution, delivery and performance by the Contracting Party of the Assigned Agreement, and the consummation of the transactions contemplated thereby, do not result in any violation of any material governmental approval that is necessary to authorize or is required in connection with the execution, delivery or performance by it of the Assigned Agreement, the violation of which would have a material adverse effect on the Contracting Party's ability to perform its obligations under the Assigned Agreement.

3. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an "Event of Default" or "default" (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to timely pay all sums due under the Assigned Agreement by the Project Owner and to timely perform any other act, duty or obligation required of the Project Owner thereunder in accordance with Section 3(c) below, subject to applicable notice and cure periods provided in the Assigned Agreement.

(b) The Contracting Party agrees that it will not terminate the Assigned Agreement (other than pursuant to Section 2.16(b), 2.16(d), 2.16(e)(iii), and 4.5(b) of the Assigned Agreement) without first giving the Collateral Agent notice and opportunity to cure as provided in the Assigned Agreement and in accordance with Section 3(c) below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent (such consent not to be unreasonably withheld, conditioned or delayed) solely to the extent that the Contracting Party is required to obtain the consent of the Project Owner prior to such assignment under the terms of the Assigned Agreement, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a “Termination Event” shall occur (other than a termination pursuant to Section 2.16(b), 2.16(d), and 4.5(b) of the Assigned Agreement), and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement, the Contracting Party shall, prior to exercising such remedy, give written notice to the Collateral Agent of such Termination Event (“Termination Notice”). If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of 30 days after receipt by it of a Termination Notice in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a “Non-monetary Event”), then the Collateral Agent shall have sixty (60) days after receipt by it of a Termination Notice in which to cure such Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, but in no event more than sixty (60) days from the date on which the Collateral Agent receives a Termination Notice (and provided that the Collateral Agent completes such proceedings within the required time period, the cure period specified above shall be tolled from and after the date that the Collateral Agent provides written notice to the Contracting Party that it intends to commence foreclosure proceedings until such proceedings have been completed), and (ii) if the Collateral Agent is prohibited from curing any such Termination Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition, but in no event more than one hundred and eighty (180) days. If the Collateral Agent fails to cure, or cause to be cured, any such default pursuant to this clause (c), the Contracting Party shall have all of its rights and remedies with respect to such default as set forth in the Assigned Agreement and at law or in equity.

(d) The Collateral Agent shall provide written notice to the Contracting Party prior to any exercise or enforcement by the Collateral Agent of the rights of the Project Owner under the Assigned Agreement.

4. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Project Owner, at the Collateral Agent’s request, the Contracting Party will enter into a new agreement with the Collateral Agent or the Collateral Agent’s designee for the remainder of

the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection, with the same covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement; provided that (i) the Collateral Agent, the Secured Parties or their designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Assigned Agreement, except any performance defaults of the Project Owner itself which by their nature are not susceptible of being cured and (ii) the Contracting Party will have all rights of default and termination with respect to any outstanding defaults that are not cured, other than any bankruptcy or insolvency related defaults that are no longer applicable upon the succession by the Collateral Agent, the Secured Parties or their designee(s) or assignee(s), or representations and warranties that were not true and correct if made by the Project Owner if made true and correct by and with respect to the Collateral Agent, the Secured Parties or their designee(s) or assignee(s).

5. Substitute Owner. The Contracting Party acknowledges that in connection with the exercise of remedies following an event of default under the Financing Documents (as defined in the Credit Agreement) in accordance with the terms thereof, the Collateral Agent may (but shall not be obligated to) assume, or cause any purchaser at any foreclosure sale or any assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights and obligations of the Project Owner thereafter arising under the Assigned Agreement so long as (i) the Collateral Agent delivers or causes to be delivered to the Contracting Party evidence reasonably satisfactory to the Contracting Party of (a) the technical capability of the proposed purchaser, assignee or transferee (it being understood that for any proposed purchaser, assignee or transferee, technical capability may be demonstrated by a showing that the purchaser, assignee or transferee or its affiliates have a minimum of three (3) years' experience in the wind energy generation and operation business, including owning, controlling or operating for at least three (3) years a minimum of five hundred (500) MW of wind energy generation capacity) and (b) the financial capability of the proposed purchaser, assignee or transferee and (ii) the purchaser, assignee or transferee satisfies the credit support requirements of Section 5.1 of the Assigned Agreement (such capitalized term in this clause (ii) shall have the meaning given to such term in the Assigned Agreement). If the interest of the Project Owner in the Assigned Agreement shall be assumed, sold or transferred as provided above, the assuming party shall agree in writing to be bound by and to assume the terms and conditions of the Assigned Agreement and any and all obligations to the Contracting Party arising or accruing thereunder from and after the date of such assumption, and the Contracting Party shall continue to perform its obligations under the Assigned Agreement in favor of the assuming party as if such party had thereafter been named as the "Seller" under the Assigned Agreement; provided that if the Collateral Agent or its designee (or any entity acting on behalf of the Collateral Agent, the Collateral Agent's designee or any of the other Secured Parties) assumes the Assigned Agreement as provided above, the recourse of the Contracting Party against the Collateral Agent, Secured Parties or their designee(s) and assignee(s) shall be limited to such parties' right, title and interest in and to the Project, the credit support required under Article 5 of the Assigned Agreement and recourse against the assets of any party or entity that assumes the Assigned Agreement.

6. Payments. The Contracting Party shall make all payments due to the Project Owner under the Assigned Agreement directly into the account specified on [Schedule II] hereto. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Project Owner from the Contracting Party under the Assigned

Agreement shall satisfy the Contracting Party's corresponding payment obligation under the Assigned Agreement.

7. [Reserved].

8. Additional Provisions. The Contracting Party acknowledges and agrees that this Consent satisfies the Project Owner's notice requirement in Section 11.4(b) of the Assigned Agreement.

9. Notices. Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) if deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by e-mail as provided below, the date when sent and e-mail confirmation is received; provided that any e-mail communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [            ]  
as Collateral Agent

\_\_\_\_\_  
\_\_\_\_\_  
Attention: [            ]  
Telephone No.:  
Email:

The Project Owner: Clearwater Energy Resources LLC  
700 Universe Boulevard  
Juno Beach, Florida  
Attn: [            ]  
Email: [            ]

The Contracting Party: Puget Sound Energy, Inc.  
10885 NE 4th Street  
Bellevue, WA 98004-5591  
Attn: Ron Roberts, Vice President, Energy Supply  
Email: ron.roberts@pse.com  
Telephone: (425) 456-2442

10. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the successors and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the other Secured Parties, the Project Owner and their respective successors, transferees and assigns.

11. Counterparts. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

12. Governing Law. This Consent and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of New York without regard to its principles of conflict of laws, except Sections 5-1401 and 5-1402 of the New York General Obligations Law.

\*\*\*\*\*

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers or signatories to execute and deliver this Consent as of the date first written above.

PUGET SOUND ENERGY, INC.

By: \_\_\_\_\_  
Name:  
Title:

[ \_\_\_\_\_ ],  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Agreed:

CLEARWATER ENERGY RESOURCES LLC

By: \_\_\_\_\_  
Name:  
Title:

Schedule I  
to  
Consent and Agreement

**Assigned Agreement**

Power Purchase Agreement by and between Puget Sound Energy, Inc. and Clearwater Energy Resources LLC, dated as of [\_\_\_\_].

Schedule II  
to  
Consent and Agreement

**Payment Instructions**  
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to:

[Collateral Agent]

**ABA Number:**  
**Account Number:**  
**Account Name:**  
**Reference:**  
**Notify:**



**EXHIBIT I-2**

**FORM OF ESTOPPEL CERTIFICATE**

**ESTOPPEL CERTIFICATE**

**(Power Purchase Agreement – \_\_\_\_\_ and**

**\_\_\_\_\_ )**

This ESTOPPEL CERTIFICATE (this “Estoppel Certificate”), dated as of \_\_\_\_\_, 20\_\_ is provided by Puget Sound Energy, Inc., a Washington corporation (“Buyer”).

**RECITALS**

A. Buyer and Clearwater Energy Resources LLC, a Delaware limited liability company (the “Project Company”) are parties to that certain Power Purchase Agreement, dated as of \_\_\_\_\_, 20\_\_ (the “Power Purchase Agreement”), pursuant to which Buyer agreed to purchase from the Project Company in accordance with the terms and conditions set forth therein up to \_\_\_\_\_ MWs of the nameplate capacity, electric energy and environmental attributes from the relevant wind project described therein (“Wind Project”).

B. Pursuant to that certain Membership Interest Purchase Agreement, dated as of the date hereof (the “MIPA”), by and between [\_\_\_\_\_] and [\_\_\_\_\_] (collectively, the “Class A Equity Investors”), the Class A Equity Investors shall acquire the “Class A” membership interests in \_\_\_\_\_, the 100% owner of the Project Company.

C. Pursuant to Section [\_\_\_\_\_] of the MIPA, the Class A Equity Investors have required that this Estoppel Certificate be delivered as a condition precedent to the consummation of the transactions described therein.

NOW, THEREFORE, in consideration of the foregoing recitals, as of the date hereof, Buyer hereby certifies, agrees and acknowledges as follows:

1. No default or Event of Default with respect to Buyer, nor, to the actual knowledge of Buyer, any other party has occurred under the Power Purchase Agreement, and, to the actual knowledge of Buyer, there are no defaults or Events of Default presently existing (or which would exist after the passage of time and/or giving of notice) that would constitute a default or an Event of Default under the Power Purchase Agreement that would entitle the Project Company or Buyer to terminate the Power Purchase Agreement.

2. To Buyer's actual knowledge, there exists no event or condition that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Company or Buyer to suspend the performance of its obligations under the Power Purchase Agreement.
3. Each representation or warranty made or given by Buyer in Section 7.2 of the Power Purchase Agreement was complete, true and correct in all material respects as of the Effective Date of the Power Purchase Agreement.
4. (i) [ Except as described in Schedule I hereto,] the Power Purchase Agreement is in full force and effect and there are no amendments, modifications or supplements (whether by written waiver or written consent) to the Power Purchase Agreement, (ii) to Buyer's actual knowledge, there are no pending disputes or legal proceedings between Buyer and the Project Company, (iii) to Buyer's actual knowledge, there is no pending action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which purports to affect the legality, validity or enforceability of the Power Purchase Agreement, (iv) Buyer is not aware of any event, act, circumstance or condition constituting an event of force majeure under the Power Purchase Agreement, and (v) to Buyer's actual knowledge, the Project Company owes no indemnity payments or other amounts to Buyer under the Power Purchase Agreement.
5. The execution and delivery by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any approval or consent of any other person or entity that has not been obtained and do not violate any provision of any law, regulation, order, judgment, injunction or other instrument or legal requirement of any court or other agency of government having applicability to the Buyer or breach any agreement presently in effect to which Buyer is a party or binding on Buyer.
6. Buyer agrees that any notices required to be delivered to Seller under Section 11.5 of the Power Purchase Agreement, including notices of an Event of Default, shall be delivered by Buyer to each of the Class B Equity Investors at their respective notice addresses set forth on Exhibit A hereto, and Buyer agrees that the Class B Equity Investors shall have the right (but not the obligation) to cure the defaults listed in any notice of default in

accordance with Section 9.2 of the Power Purchase Agreement within a cure period that is the same length as the cure period afforded to Seller under the Power Purchase Agreement with respect to such event, and which starts on the date that the Class B Equity Investors receive such notice that lists the default or defaults of the Seller under the Power Purchase Agreement (which notice may be issued concurrently with any such notice issued to the Seller under the Power Purchase Agreement).

*[Signature page follows]*

**IN WITNESS WHEREOF**, Buyer has caused this Estoppel Certificate to be executed by its undersigned authorized officer or signatory as of the date first set forth above.

PUGET SOUND ENERGY, INC.

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

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

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

**Schedule I**

**Exhibit A**