

**EXH. ZCY-4C
DOCKETS UE-240004/UG-240005
2024 PSE GENERAL RATE CASE
WITNESS: ZACARIAS C. YANEZ**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Docket UE-240004
Docket UG-240005**

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

ZACARIAS C. YANEZ

ON BEHALF OF PUGET SOUND ENERGY

REDACTED VERSION

FEBRUARY 15, 2024

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

POWER SALES AGREEMENT

BY AND BETWEEN

PUBLIC UTILITY DISTRICT NO. 1

OF

CHELAN COUNTY, WASHINGTON

AND

PUGET SOUND ENERGY, INC.

DATED AS OF

February 7, 2023

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Appendix B: Output and Planning

Appendix C: Project Transmission Facilities

Appendix D: Start Cycle Tracking Methodology

Appendix E: Fixed Annual Charge

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA**POWER SALES AGREEMENT**

This Agreement is dated as of the ____ day of _____, 2023 (the “Signing Date”) by and between Public Utility District No. 1 of Chelan County, Washington (hereinafter referred to as the “District”), and Puget Sound Energy, Inc., (hereinafter referred to as the “Purchaser”), a Washington corporation (collectively referred to as the “Parties” and individually as a “Party”).

RECITALS

The District is the owner and operator of the Rock Island and Rocky Reach Projects (as hereinafter defined, the “Projects”), located in or adjacent to Chelan County, Washington. The Purchaser wishes to purchase a percentage of the Energy and Capacity of the Projects, along with the Environmental Attributes associated therewith, using a methodology as set forth herein, and the District is willing to sell such Energy, Capacity, and Environmental Attributes, all subject to the terms and conditions set forth herein.

For and in consideration of the promises, representations and undertakings of the Parties, they covenant and agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01. **Definitions.** The following definitions shall apply throughout this Agreement and its Appendices whenever the term is capitalized. Other terms with special meaning within this Agreement are defined in the text or in the Appendices.

“*Affiliate*” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“*Agreement*” means this Agreement, including the schedules and appendices hereto, all as may be amended from time to time pursuant to the terms hereof.

“*Annual True-Up*” has the meaning set forth in Section 8.01(D) hereof.

“*Appendix*” means an Appendix attached to this Agreement.

“*Approval Date*” means the date FERC accepts this Agreement under Section 22 of the Federal Power Act , 16 U.S.C. § 815, as required by that section due to the Term of this Agreement extending beyond the term of the current Rock Island license.

“*Balancing Authority (BA)*” has the meaning given in the NERC Glossary.

“*Balancing Authority Area (BAA)*” has the meaning given in the NERC Glossary.

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“*Bankruptcy Law*” has the meaning set forth in Section 15.01(D) hereof.

“*Breaching Party*” has the meaning set forth in Section 19.01 hereof.

“*Business Day*” means any day other than a Saturday or Sunday or a national holiday (United States of America). United States holidays shall be holidays observed by Federal Reserve member banks in New York, New York. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. PPT.

“*Canadian Entitlement*” means the amount of energy and capacity that Rocky Reach and Rock Island are obligated to return to Bonneville Power Administration (BPA) in its capacity as the U.S. Entity for the account of the Canadian government to fulfill obligations under the U.S.-Canadian Columbia River Treaty of 1964, or successor treaty or international agreement, as defined in the Canadian Entitlement Allocation Extension Agreement.

“*Canadian Entitlement Allocation Extension Agreement*” means the April 1997 Canadian Entitlement Allocation Extension Agreement by and between the United States of America, acting by and through the Bonneville Power Administration, acting in the capacity of Bonneville Power Administrator and acting for and on behalf of the United States Entity, and Public Utility District No. 1 of Chelan County, Washington, or any amended or successor agreement that imposes an obligation to return Canadian Entitlement.

“*Capacity*” means the generation potential of the Chelan Power System as adjusted for limitations and obligations in accordance with Section 1 of Appendix B.

“*Capital Recovery Charge*” has the meaning set forth in Section 7.01(G).

“*Capital Recovery Charge Base*” has the meaning set forth in Section 7.01(G)(ii).

“*Capital Recovery Charge Percentage*” has the meaning set forth in Section 7.01(G)(i).

“*Capital Improvements*” means such capital repairs, renewals, additions, improvements and replacements of the Chelan Power System and the Chelan Power System’s proportional share of shared assets in the District internal service fund, together with preliminary surveys, investigations, architectural, engineering, design, consulting, legal, financial and other services and items properly chargeable thereto, as the District may reasonably determine consistent with GAAP, FERC regulations (including FERC’s Uniform System of Accounts) and District accounting policies, practices and procedures.

“*Change in Control*” shall be deemed to have occurred if an event or series of events shall have occurred as a result of which any “person” or “group” (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act) shall have acquired legal or beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under said Act), directly or indirectly, of more than the greater of fifty percent (50%) or the shareholder percentage required to take affirmative board action based on Purchaser’s governing articles of the combined voting power of or economic interests in the outstanding Equity

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Interests in Purchaser, or any other ownership interest enabling such third party to exercise control of Purchaser or its operations.

“*Change in Law*” has the meaning set forth in Section 6.03.

“*Chelan Power System*” means, collectively, Rocky Reach and Rock Island, in each case as each such Project exists as of the Delivery Start Date. The Chelan Power System shall also include any expansion of the generating capacity of such Projects after the Delivery Start Date, including efficiency improvements and upgrades that become a part of the respective Project, but shall not include any other power generation, transmission or distribution assets or rights, now owned or hereafter acquired by the District.

“*Chelan Transmission Rate Schedules*” means the schedules of rates for transmission service on the Chelan Transmission System as may be amended, superseded or replaced from time to time.

“*Chelan Transmission System*” means the District’s electric facilities, whether owned or leased, that are operated at voltages in excess of 100,000 volts, including all associated system protection and control facilities, and any other facilities, including land and access roads that may be classified as “transmission facilities” pursuant to the FERC Uniform System of Accounts. The Chelan Transmission System does not include (i) Project Transmission Facilities; (ii) any transmission facility, substation, or related equipment constructed and operated by the District for the sole use or benefit of a single customer pursuant to a written agreement between the District and that customer; or (iii) any transmission facility or generator-interconnection facility constructed or acquired by the District after the Signing Date for the exclusive purpose of the District receiving power from a new power resource unrelated to the Chelan Power System.

“*Claims*” means all claims (including counterclaims), demands, actions or proceedings, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity or limitation of liability, and the resulting costs, judgments, liabilities, losses, damages, penalties, interest, expenses, attorneys fees, court costs and costs of investigation, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“*Collateral Annex*” means the agreement, entitled Collateral Annex, entered into between the Parties and providing for the security of obligations under this Agreement, as such Collateral Annex may be amended from time to time.

“*COLA*” means the District’s Coordinated Optimization Logic and Accounting system, which includes the energy management system, river models, project and unit dispatch models and logic, spill and other operational logic, and accounting systems for operations associated with Output, as may be modified or replaced from time to time, including modification or replacement by agreements regarding coordinated operations with other Columbia River dam owners.

“*Commercially Reasonable*” or “*Commercially Reasonable Efforts*” means, with respect to any purchase or sale or other action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonably prudent business would undertake for the

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protection of its own interest under the conditions affecting such purchase or sale or other action, including without limitation, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, the competitive environment in which such purchase or sale or other action occurs and the risk to the Party required to take such action. A “Commercially Reasonable” standard is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of commonly used efforts, methods or acts.

“*Conditions Precedent*” has the meaning set forth in Section 3.02.

“*Confidential Information*” has the meaning set forth in Section 19.01.

“*Contract Year*” means the period commencing on the Delivery Start Date and ending on the next succeeding December 31, and each 12-month period thereafter, except for the calendar year during which the expiration or termination date of the Agreement occurs, in which case the Contract Year means the period commencing on January 1 of such year and ending on such expiration or termination date.

“*Coverage Amount*” means the sum, as of the date of calculation, of (i) with respect to Debt Obligations outstanding on the Signing Date and identified in Schedule A-1 in Appendix A, an amount equal to fifteen percent (15%) of the maximum estimated aggregate amount of the Financing Costs described in Section 2(b)(i) of Appendix A that will be payable in any Contract Year during the Term, as determined by the District as of the Signing Date for all Debt Obligations then outstanding, and (ii) with respect to all Debt Obligations issued after the Signing Date, an amount equal to fifteen percent (15%) of the maximum estimated aggregate amount (each amount included in such aggregate amount to be as determined by the District as of the date of issuance or incurrence of the applicable Debt Obligation) of Financing Costs with respect to such Debt Obligations as described in Section 2(b)(ii) of Appendix A, that will be payable in any Contract Year during the Term.

“*Coverage Fund*” means the Coverage Fund described in Section 7.01(D) of this Agreement.

“*Cover Sheet Elections*” means the agreement entered into between the Parties, supplemental to the Collateral Annex, and entitled Cover Sheet Elections as may be amended from time to time.

[REDACTED]

“*Debt Administrative Charge*” means the charge imposed on the Purchaser pursuant to Section 7.01(I) of this Agreement.

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“*Debt Obligation*” has the meaning set forth in Section 1 of Appendix A.

“*Debt Reduction Charge*” has the meaning set forth in Section 7.01(F).

7.01(F)(i). “*Debt Reduction Charge Percentage*” has the meaning set forth in Section

7.01(F)(ii). “*Debt Reduction Charge Obligations*” has the meaning set forth in Section

“*Deemed Maturity*” has the meaning set forth in Section 1 of Appendix A.

“*Defaulting Participant*” has the meaning set forth in Section 5.04 hereof.

“*Defaulting Party*” has the meaning set forth in Section 15.01 hereof.

“*Delivery Start Date*” means November 1, 2031.

“*Disclosing Party*” has the meaning set forth in Section 19.01 hereof.

“*Dispute*” has the meaning set forth in Section 16.02 hereof.

“*District*” has the meaning set forth in the Recitals.

“*District Business Practices*” means those policies, procedures, operating protocols, and business practices of the District that are in effect and amended from time to time. District Business Practices shall be posted on the District’s website.

“*District Enterprise Units*” means and shall include each utility, enterprise or operating system or unit of the District, exclusive of Rocky Reach and Rock Island, as the District may designate from time to time, that may make advances or inter-fund loans to the Chelan Power System as contemplated within the definition of Debt Obligations in Appendix A hereto.

“*District OATT*” means the Chelan County Public Utility District Open Access Transmission Tariff, Volume No. 1, effective July 1, 2022, as amended or supplemented by the District from time to time, or any successor tariff or business practice adopted by the District. The numbering of sections referenced herein correspond to the District OATT effective July 1, 2022. To the extent any referenced section is renumbered, the reference thereto in this Agreement shall be deemed to be revised, as appropriate, to refer to the renumbered section.

“*District Slice Operating Instructions*” means those instructions and details pertaining to the Output as adopted and amended by the District from time to time and posted on the District’s website, along with the provisions contained in this Agreement.

“*District System Emergency*” means a condition or situation that, in the judgment of the District and in conformance with guidelines of FERC, NERC, the WECC or other entities with regulatory jurisdiction (whether by contract or operation of Law) over the District concerning system emergencies, adversely affects or is likely to adversely affect: (i) public health, life or

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property; (ii) District's employees, agents or property; or (iii) District's ability to maintain safe, adequate, and reliable electric service to its respective customers.

"Downgrade Event" means the Purchaser's corporate debt rating (a) from S&P is withdrawn, suspended or reduced below "BBB-" (or corresponding successor rating); or (b) from Moody's is withdrawn, suspended or reduced below "Baa3" (or corresponding successor rating); or (c) from Fitch is withdrawn, suspended or reduced below "BBB-" (or corresponding successor rating). If any Rating Agency has not assigned a rating to Purchaser as of the Signing Date, a Downgrade Event shall not occur as to that Rating Agency until such a rating has been assigned and such rating is either at or below the respective level set forth above, or the initial higher rating is thereafter withdrawn, suspended or reduced below the respective level set forth above.

"Dryden Facilities" means the District's dam, spillway, irrigation flume and related facilities located on the Wenatchee River near Dryden in Chelan County, Washington.

"Due Date" has the meaning set forth in Section 8.01(A) hereof.

"Dynamic Transfer Agreement" means a dynamic scheduling, pseudo tie or other agreement entered into by the Purchaser and the District.

"Energy" means the energy production, expressed in megawatt hours, of the Chelan Power System as measured in megawatts integrated over an hour and adjusted for limitations and obligations in accordance with Section 1 of Appendix B.

"Entiat Facilities" means the District's diversion and irrigation facilities located in and adjacent to the Entiat River in Chelan County.

"Environmental Attributes" means the fuel, emissions, and all other environmental characteristics, credits, allowances, claims, reductions, offsets, and benefits associated with the generation of electricity from a renewable resource of the Rocky Reach Project and the Rock Island Project, except any energy, capacity, reliability or other power attributes used to provide electricity service as defined in this Agreement. Environmental Attributes, also known as non-power attributes, include but are not limited to: (1) facility's fuel type, geographic location, vintage; (2) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to absorb infra-red radiation in the atmosphere and contribute to the actual or potential altering of the Earth's climate by trapping heat in the atmosphere.

"Escalation Factor" has the meaning set forth in Section 7.01(G)(iii).

"Event of Default" has the meaning set forth in Section 15.01.

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

"Financing Costs" has the meaning set forth in Section 2(b) of Appendix A hereof.

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“*Firm Point-to-Point Transmission Service*” has the meaning given in the District OATT.

“*Fiscal Year*” means the twelve-month period selected by the District from time to time as its fiscal year for accounting and other purposes, which currently is the twelve-month period commencing on January 1 and ending on the next succeeding December 31.

“*Fitch*” means Fitch Ratings, or any successor thereto and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated in writing by the District.

“*Fixed Annual Charge Reduction Factor*” has the meaning set forth in Section 6.03.

“*GAAP*” means, as of any applicable date of determination, generally accepted accounting principles in effect in the United States, as applied to Government Authorities such as the District.

“*Government Authority*” means any federal, state, local, territorial or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof. For purposes of this Agreement, except for the definition of “Person”, the term Government Authority does not include the District.

“*Incremental Efficiency Gains*” means the Energy and Capacity derived from any improvements or efficiency upgrades at Rocky Reach and Rock Island completed after January 1, 1994, including but not limited to the installation or modification of equipment and structures or operating protocols, which the District determines result in improved or increased efficiency or capacity and/or produces incremental electricity.

“*Independent Investment Banker*” has the meaning set forth in Section 1 of Appendix A.

“*Index Rate*” has the meaning set forth in Section 1 of Appendix A.

“*In Service Date*” has the meaning set forth in Section 1 of Appendix A.

“*Law*” means any statute, law, order, rule or regulation imposed by a Government Authority.

“*Meters*” has the meaning set forth in Section 23.11(A).

“*MW*” means a megawatt, or one thousand (1,000) kilowatts.

“*MWh*” means a megawatt hour or one thousand (1,000) kilowatt hours.

[REDACTED]

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“*Month*” means a calendar month.

“*Moody’s*” means Moody’s Investors Service, Inc., or any successor thereto and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “*Moody’s*” shall be deemed to refer to any other nationally recognized securities rating agency designated in writing by the District.

“*NERC*” means the North American Electric Reliability Corporation or its successor responsible for insuring a reliable, adequate and secure bulk electric system.

“*NERC Glossary*” means the Glossary of Terms used in NERC Reliability Standards as issued, reissued, and amended from time to time by NERC.

“*Net Costs*” has the meaning set forth in Section 2 of Appendix A hereof.

[REDACTED]

“*Operating Agreements*” means any agreements to which the District is or may become a party, and which relate to the operation of Rocky Reach and Rock Island, including but not limited to, the Pacific Northwest Coordination Agreement and the Northwest Power Pool (NWPP) Agreement, as such agreements currently exist or hereafter may be amended.

“*Operating Costs*” has the meaning set forth in Section 2(a) of Appendix A hereof.

“*Organized Market Participation*” means the use of Purchaser’s Percentage of Output in an organized wholesale electric market where the Purchaser’s Percentage of Output dispatch instructions are issued by an independent market operator or similar party.

“*Organized Market Participation Operating Agreement*” means an agreement between the Purchaser and the District that describes the terms and requirements for Organized Market Participation by Purchaser’s Percentage of Output.

“*Output*” means an amount of Energy, Capacity, and Environmental Attributes generated by the Chelan Power System at a particular time, in each case to the extent described in and determined pursuant to Section 1 of Appendix B hereof, and subject to the limitations set forth in Articles V and VI of this Agreement and the provisions of Appendix B. Output includes, and Purchaser’s Percentage of Output shall be determined based on, any Output from the Projects, including any Incremental Efficiency Gains; however, for the sole purpose of determining Purchaser’s share of Environmental Attributes associated with Purchaser’s Percentage of Output, all of the Purchaser’s Percentage of Output will be deemed to be made available by the District pursuant to this Agreement from that portion of Rocky Reach and Rock Island that does not produce Incremental Efficiency Gains.

“*Pacific Northwest Coordination Agreement*” or “*PNCA*” means the agreement amongst northwest parties executed in 1997 for the coordinated operation of the Columbia River System which became effective August 1, 2003, as such agreement may be amended or superseded from time to time.

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“Party” or “Parties” has the meaning set forth in the preamble.

[REDACTED]

“Periodic Payments” means the sum of all of the payments, costs and charges described or referred in this Agreement to be paid in accordance with Section 8.01 of this Agreement.

“Permanently Retired” means, with respect to a Project, that such Project or specified Units of such Project, have been shut down for three years with no material indications of intent to return to service, or notice of permanent cessation of operations with respect thereto has been given by the District to the Purchaser. Material indications of intent to return to service, or lack of such intent, may be found in or inferred from sources such as approved budgets, operating and maintenance expenditures, Capital Spending Forecasts, bond official statements and regulatory filings.

“Person” means any individual, limited liability company, sole proprietorship, corporation, partnership, joint venture, trust, unincorporated organization or Government Authority.

“Physical Start Cycle” has the meaning set forth in Appendix D.

“Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

“Present Value Rate” has the meaning set forth in Section 15.03(I).

“Project” means each of Rock Island and Rocky Reach.

“Project Nameplate” means, for purposes of calculating transmission needs for Purchaser’s Percentage pursuant to Section 9.03 of this Agreement and also for purposes of calculating the Fixed Annual Charge Reduction Factor pursuant to Section 6.03 of this Agreement, the nameplate generator capacity of the Chelan Power System as determined by the District and updated from time to time. For reference purposes only, as of the Signing Date, Project Nameplate is 1978.4 MW which is the sum of 1349.0 MW for Rocky Reach and 629.4 MW for Rock Island.

“Prudent Utility Practice” means any of the practices, methods and acts engaged in, or approved by, a significant portion of the electric utility industry in the Western Interconnection for operating facilities of a size and technology similar to the Project during the relevant time period or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known, at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with applicable Laws, longevity, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of commonly used practices, methods and acts.

Shaded Information is Designated
CONFIDENTIAL per WAC 480-07-160

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“*Purchaser*” has the meaning set forth in the preamble.

“*Purchaser’s Percentage*” means the percentage set forth in Section 5.01(A) hereof, as such amount may be adjusted from time to time pursuant to the terms of this Agreement.

“*Purchaser’s Percentage of Output*” means an amount for any period equal to the product of (i) the Purchaser’s Percentage, and (ii) the actual Output for that period.

“*Purchaser’s Step-up Percentage*” has the meaning set forth in Section 5.04 hereof.

“*Purchaser Allowable Start Cycles*” has the meaning set forth in Appendix D.

“*Purchaser Start Cycles*” has the meaning set forth in Appendix D.

“*Rating Agencies*” means, collectively, Fitch, Moody’s and S&P.

“*Rating Agency*” means any one of the Rating Agencies.

“*RC West*” means the California Independent System Operator, or its successor, in its role as and fulfilling the duties of the registered Reliability Coordinator as defined by NERC, and as delegated by WECC, for the District’s BAA and transmission system.

“*RCW*” means the Revised Codes of Washington.

“*Record*” has the meaning set forth in Section 19.03(A).

“*Refinance,*” or “*Refinancing*” when used with respect to an outstanding Debt Obligation or portion thereof, means to refund, refinance or remarket such Debt Obligation.

“*Refunding Obligations*” means a bond, note (including a commercial paper note or bond anticipation note), installment purchase agreement, financing lease, inter-fund loan or any other obligation for borrowed money, or any portion thereof, issued or incurred by or on behalf of the District, for purposes of Refinancing a Debt Obligation or a Refunding Obligation. The term “*Refunding Obligations*” shall not be included in the calculation of Debt Obligations.

“*Related Power Sales Agreement*” means a power sales agreement between a Share Participant and the District for the purchase and sale of a percentage of the Output of the Chelan Power System as so designated by the District and containing terms and conditions similar to the terms and conditions set forth herein and pricing based on cost components similar to the cost components in this Agreement.

“*Reliability Standards*” has the meaning set forth in Appendix B.

“*Renewable Energy Credit*” means a tradable certificate of proof of one megawatt-hour of a renewable resource. The certificate includes all of the Environmental Attributes associated with that one megawatt-hour of electricity.

“*Reserve and Contingency Fund*” means the fund or funds created under the Project bond resolutions including the Resolutions 97-10671, 97-10672 and any successor

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resolutions. As long as bonds remain outstanding under such resolutions, deposit requirements into the appropriate Reserve and Contingency Fund may be made from the Capital Recovery Fund and/or the Debt Reduction Fund, and from Purchaser's payments made in respect of Financing Costs allocated to that purpose under Schedule A-1 in Appendix A. Required and authorized uses of the Reserve and Contingency Funds shall be made in accordance with the appropriate Project bond resolution or, after the retirement of such bonds, for any other lawful Project purpose not inconsistent with the provisions of this Agreement.

“Rock Island” means (i) the District's Rock Island Hydroelectric Project as currently licensed by FERC under license number 943, and any successor license, including any efficiency improvements and upgrades that increase generating capacity and any decommissioning of Units as contemplated in Section 6.03, in each case made by the District from time to time during the Term, together with (ii) the Dryden Facilities, the Entiat Facilities and the Tumwater Facilities.

“Rocky Reach” means the District's Rocky Reach Hydroelectric Project as currently licensed by FERC under license number 2145, and any successor license, including any efficiency improvements and upgrades that increase generating capacity and any decommissioning of Units as contemplated in Section 6.03, in each case, made by the District from time to time during the Term.

“Schedule” or *“Scheduling”* means the actions or product of the Purchaser and/or its designated representatives, including the Purchaser's Transmission Provider(s), if applicable, of notifying, requesting and confirming to the District the quantity and type of product to be delivered on any given day or days at a specified Transmission Point of Delivery.

“S&P” means S&P Global Ratings, a Division of S&P Global, Inc., or any successor thereto and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, *“S&P”* shall be deemed to refer to any other nationally recognized securities rating agency designated in writing by the District.

“Share Participant” means a third-party purchaser, unrelated to the District, who signs a Related Power Sales Agreement with the District for a share of Output of the Chelan Power System.

“Signing Date” means the date the Parties sign this Agreement, which shall be deemed to be the date recited in the first paragraph of this Agreement.

“Slice Contract” means any contracts titled Contract(s) for Sale of Output from the Rocky Reach Project and Rock Island Project executed by the Parties.

“Step-Up Effective Date” has the meaning set forth in Section 5.04 hereof.

“Term” has the meaning set forth in Section 3.01 hereof.

“Third Party Parallel Transmission Interconnection” means any interconnection between either Party's electric system and the electric system of any signatory to the Pacific

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Northwest Coordination Agreement or agreements regarding coordinated operations with other Columbia River dam owners.

“Transmission Loss Factor” means the amount of transmission and transformation losses of Purchaser’s Percentage of Output, expressed as a percentage, that result from delivering Purchaser’s Percentage of Output across the Chelan Transmission System. The effective Transmission Loss Factor is the loss factor published by the District in the then-effective Chelan Transmission Rate Schedules, as may be amended from time to time and published by the District. The initial Transmission Loss Factor, effective as of the Signing Date, is 0.341 percent.

“Transmission Point(s) of Delivery” means the point(s) where the Chelan Transmission System interconnects with the Purchaser’s electric transmission facilities or a third party’s electric transmission facilities, all of which are described in Article IX.

“Transmission Provider” means any entity or entities transmitting or transporting the Purchaser’s Percentage of Output on behalf of Purchaser from the Transmission Point(s) of Delivery.

“Tumwater Facilities” means the dam, spillway and related facilities owned and operated by the District, located on the Wenatchee River in Tumwater Canyon.

“Unacceptable Operating Condition” means any condition of significant magnitude on an electric system that is inconsistent with Prudent Utility Practice or Reliability Standards.

“Uniform System of Accounts” means the system of accounts for Public Utilities and Licensees as prescribed by FERC, constituting Part 101 of Title 18 of the Code of Federal Regulations, as supplemented and amended, used to account for the costs of generating projects, and any successor thereto and to the account designations thereunder.

“Unit” means any Output generating unit of the Chelan Power System.

“WECC” means the Western Electricity Coordinating Council or its successor, or such other entity or entities responsible for regional reliability as determined by the District.

“Working Capital Charge” has the meaning set forth in Section 7.01(B) of this Agreement.

“WSPP Agreement” means the WSPP Agreement, including Service Schedules and Exhibits attached, the Master Confirmation Agreement to the WSPP Agreement executed by the Parties, any amendments and annexes thereto agreed to between the Parties, and all transactions evidenced by confirmations between the Parties entered into or conducted thereunder. The numbering of sections contained herein correspond to the WSPP Agreement effective as of July 28, 2020 and any renumbering of the sections shall not affect the terms of this Agreement.

“WSPP Transactions” mean all transactions between the Parties conducted under the WSPP Agreement including Service Schedules and Exhibits attached, as may be amended, and any confirmations of such transactions as defined in the WSPP Agreement.

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Section 1.02. **Interpretation.** Unless the context otherwise requires:

(A) Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

(B) Any reference in this Agreement to any Person includes its successors and permitted assigns and, in the case of any Government Authority, any Person succeeding to its functions and capacities.

(C) Any reference in this Agreement to any Section or Appendix means and refers to the Section contained in, or Appendix attached to, this Agreement, unless otherwise specified.

(D) Any reference in this Agreement to a certain time of day shall be based on the then Pacific prevailing time (PPT).

(E) If any payment, act, matter or thing hereunder, required to be done under this Agreement on a date certain, would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next following Business Day.

(F) A reference to the words “hereof,” “herein,” and “hereunder” refer to this Agreement as a whole and not to any particular provision of this Agreement.

(G) All uses of “include” or “including” shall be deemed to be followed by “without limitation.”

(H) The phrases “as determined by the District,” “in the discretion of the District,” “the District considers necessary,” “the District deems necessary” or similar phrases, exclusive of phrases such as “in the District’s sole discretion” or other phrases using “solely,” or “sole,” unless the context otherwise indicates, refers to a determination made by the District in its reasonable discretion.

(I) All references to a law, rule, regulation, contract, agreement, or other document mean that law, rule, regulation, contract, agreement, or document as amended, modified, supplemented or restated, from time to time.

(J) Any definition of one part of speech of a word, such as definition of the noun form of that word, shall have a comparable meaning when used as a different part of speech, such as the verb form of that word and other grammatical forms of defined words or phrases, if initially capitalized, have corresponding meanings.

Words not otherwise defined herein that have well-known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

In the event of a conflict or inconsistency between this Agreement and any Appendix or attachment, the provisions of this Agreement shall take precedence. In the event of a conflict or

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inconsistency between any Appendix and an attachment, the provisions of such Appendix shall take precedence.

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**ARTICLE II
APPENDICES**

Section 2.01. ***Appendices.*** The terms and provisions of the following Appendices constitute a part of and are hereby incorporated by this reference in this Agreement:

Appendix A: Determination of Chelan Power System Net Costs

Appendix B: Output and Planning

Appendix C: Project Transmission Facilities

Appendix D: Start Cycle Tracking Methodology

Appendix E: Fixed Annual Charge

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ARTICLE III TERM AND TERMINATION

Section 3.01. **Term.** This Agreement shall become effective as of the Signing Date. The Term shall commence as of the Signing Date and shall expire as of midnight on October 31, 2051, unless this Agreement expires or is terminated earlier pursuant to its terms (the “Term”). All obligations accruing or arising prior to the termination or expiration of this Agreement shall survive the termination or expiration hereof until satisfied in full.

Section 3.02. **Condition Precedent to Effectiveness.** The Parties agree and acknowledge that the respective rights and obligations of the Parties under this Agreement with respect to the Purchaser’s Percentage of Output from Chelan Power System, including the District’s obligation to deliver Output attributable to such Projects and the Purchaser’s obligation to pay any Periodic Payments, are contingent upon the satisfaction of the following conditions precedent (collectively, the “Conditions Precedent,”) at least ten (10) Business Days prior to the Delivery Start Date: (1) no default shall have occurred and be continuing under any current contract(s) between the Parties; (2) no Event of Default or Potential Event of Default exists under this Agreement; (3) the representations contained in Article IV continue to be true; (4) no termination described in Section 3.03 has occurred; (5) the Parties have amended the existing Collateral Annex, Cover Sheet Elections, and Dynamic Transfer Agreement to include this Agreement and the Parties have entered into any additional agreements reasonably necessary to implement this Agreement, in form and substance reasonably satisfactory to the District and Purchaser; and (6) Purchaser has paid in full all amounts due under Sections 7.01(B)(i) and 7.01(D)(i). Notwithstanding the foregoing, the Parties’ rights and obligations with respect to Performance Assurance under Article XX are effective as of the Signing Date and are not contingent upon achievement of the Delivery Start Date.

Either Party may waive the other Party’s satisfaction of any Condition Precedent in writing. Such waiver will not constitute a waiver of any underlying default, any Event of Default, or any Potential Event of Default. Either Party may postpone the other Party’s requirement to satisfy any Condition Precedent, without waiving such Condition Precedent, that the other Party has not satisfied at least ten (10) Business Days prior to the Delivery Start Date. If any Condition Precedent postponed by the District has not been satisfied within 180 days following the Delivery Start Date, the District may terminate this Agreement in accordance with Section 3.03.

Section 3.03. **Termination.** This Agreement may only be terminated (i) by mutual agreement of the Parties; (ii) by either Party if the Approval Date has not occurred by the Delivery Start Date, provided that the Party wishing to terminate this Agreement pursuant to this clause (ii) shall give the other Party written notice of such termination within five (5) Business Days after the Delivery Start Date; (iii) by the District pursuant to the provisions of Section 15.02 if the Purchaser has not cured the specified default within the cure periods, if any, specified therein (which termination event, at the District’s discretion, may supersede a termination under Section 3.02, Condition Precedent (2)); or (iv) by the District pursuant to Section 3.02. In the event this Agreement is terminated pursuant to subsections (i), (ii) or (iv), neither Party shall be liable to the other Party for damages due to such termination. Any termination of this Agreement by a Party pursuant to the terms hereof shall be effected by and effective only upon receipt of written notice of such termination by the other Party.

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Section 3.04. **Continued Effectiveness after Termination.** After termination or expiration of the Term, any provisions that may be reasonably interpreted or construed as being intended to survive the termination or expiration of the Term or this Agreement, including, without limitation, Article XXI (Limitation of Liability), and all unsatisfied billing and payment obligations that arose during the Term, shall survive such termination or expiration.

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ARTICLE IV REPRESENTATIONS

Section 4.01. **Representations.** As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents to the other Party, as of the date of execution hereof, as follows:

(A) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct its business in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to qualify would reasonably be expected to have a material adverse effect upon its financial condition, operations, prospects or business, taken as a whole, or its ability to perform its obligations under this Agreement;

(B) the execution, delivery, and performance of this Agreement are within its statutory and corporate powers;

(C) it has full legal right, power, and authority to execute, deliver, and perform its obligations under this Agreement; it has taken all appropriate and necessary action to authorize the execution, delivery, and performance of this Agreement including, without limitation, the approval by its Board of Commissioners or Board of Directors, as the case may be; and this Agreement has been duly and validly executed and delivered by it; and this Agreement does not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it;

(D) this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditors' rights generally, with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, and to limitations on remedies against Government Authorities under the laws of the State of Washington;

(E) except for the FERC approval of this Agreement as referred to herein, no authorization, approval, exemption, or consent by any governmental or public body or authority is required in connection with the authorization, execution, delivery, and carrying out of the terms of this Agreement, which has not yet been obtained or which is not presently undergoing the necessary processes to be obtained;

(F) there are no bankruptcy, insolvency, reorganization, receivership, or other arrangement or proceedings pending or being contemplated by it, or to its knowledge threatened against it;

(G) there are no actions, suits, proceedings, or investigations pending or, to the Party's knowledge, threatened against such Party or any of its Affiliates, at law or in equity before any Government Authority, having jurisdiction over such Party which, if adversely determined, would individually or in the aggregate have a material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of such Party, or result in any impairment of such

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Party's ability to perform its obligations under this Agreement;

(H) it has no knowledge of any violation or default by such Party or its Affiliates with respect to any order, writ, injunction, or decree of any court or any federal, state, municipal, or other governmental department, commission, board, agency, or instrumentality which is reasonably likely to have such a material adverse effect or to result in such impairment as described in clause (G); and

(I) it is not subject to any material outstanding judgment, order, writ, injunction, or decree of any Government Authority having jurisdiction over such Party which would materially and adversely affect its ability to enter into and perform its obligations under this Agreement.

Section 4.02. **Compliance Covenant.** Each Party covenants and agrees to take whatever action it, in good faith, deems reasonably necessary and within its reasonable control to ensure that the representations related to it under clauses (A) through (E) of Section 4.01 will not be violated in any material respect during the Term.

Section 4.03. **Independent Decision.** Each Party is acting for its own account and has made its own independent decision to enter this Agreement, and this Agreement is appropriate or proper for it based upon its own judgment. Neither Party is relying upon the advice or recommendations of the other Party in so doing, and each Party is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of the Agreement.

Section 4.04. **Ability to Perform.** Each Party has entered into this Agreement in connection with the conduct of its business, and it has the capacity or ability to make or take delivery of the Purchaser's Percentage of Output referred to in this Agreement.

Section 4.05. **Forward Contract Merchant.** Each Party acknowledges and agrees that this Agreement is a "forward contract" and that each Party is either a "forward contract merchant" or "financial participant," in each case as those terms are used in the United States Bankruptcy Code, and that it is entering into this Agreement, and is in the business of entering into forward contracts, for the purchase and sale of electricity to generate a profit and not merely as an end user nor as a hedge.

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ARTICLE V OUTPUT

Section 5.01. Output To Be Made Available.

(A) Beginning at 00:00 hours on the later of the Delivery Start Date or 10 Business Days after each Condition Precedent has been satisfied or waived and continuing until the end of the Term or, if earlier, the date on which this Agreement is terminated, the District shall during each hour sell, deliver to and make available for Scheduling by Purchaser, at the Transmission Point(s) of Delivery, Purchaser's Percentage of Output, and Purchaser shall during each hour purchase and receive (or cause to be received), at the Transmission Point(s) of Delivery, and Schedule the Purchaser's Percentage of Output for every such hour. Purchaser's Percentage shall be twenty-five percent from the Delivery Start Date through the remainder of the Term of this Agreement, as the same may be modified from time to time pursuant to Section 5.04.

(B) It is expressly acknowledged and agreed by the Parties that Output is dynamic and variable and is dependent upon a variety of factors including, without limitation, availability of water and operable generation Units of the Chelan Power System, electric system reliability requirements, federal and state laws, rules, regulations and orders affecting river flows and operation of the Projects regarding endangered species and other environmental matters, matters giving rise to curtailment described in Section 6.01 or Section 6.03 and other restrictions on Output described in Appendix B, the terms of which Appendix are incorporated by reference. Output can and will vary substantially from hour-to-hour, season-to-season and year-to-year. Appendix B in conjunction with Article IX shall also govern the delivery of the Output from the Chelan Power System to the Transmission Point(s) of Delivery, shall define the scheduling procedures and scheduling requirements of the Output, shall provide for the transmission of Output to the Transmission Point(s) of Delivery, shall provide for management of the Purchaser's Percentage, shall define the services included in Output, and shall describe certain services and products offered by the District.

(C) PURCHASER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, (1) THE DISTRICT'S OBLIGATION TO SELL AND DELIVER OUTPUT IS EXPRESSLY LIMITED TO PURCHASER'S PERCENTAGE OF ANY OUTPUT ACTUALLY PRODUCED BY THE CHELAN POWER SYSTEM AND MADE AVAILABLE AT A TRANSMISSION POINT OF DELIVERY, (2) THAT THE OUTPUT IS DYNAMIC AND VARIABLE AND IS DEPENDENT UPON A VARIETY OF FACTORS INCLUDING, WITHOUT LIMITATION, AVAILABILITY FOR ANY REASON OF WATER AND OPERABLE UNITS OF THE CHELAN POWER SYSTEM, ELECTRIC SYSTEM RELIABILITY REQUIREMENTS, OPERATING AGREEMENTS, FEDERAL AND STATE LAWS, RULES, REGULATIONS, AND ANY ORDER ISSUED BY A GOVERNMENT AUTHORITY AFFECTING RIVER FLOWS, THE OPERATION OF THE PROJECTS, ENDANGERED SPECIES OR ANY OTHER MATTER, AND (3) THAT THE DISTRICT WILL NOT BE LIABLE TO THE PURCHASER FOR THE FAILURE TO DELIVER ANY OUTPUT THAT IS NOT OTHERWISE PRODUCED BY THE CHELAN POWER SYSTEM OR MADE AVAILABLE AT A TRANSMISSION POINT OF DELIVERY, REGARDLESS OF THE REASON FOR SUCH UNAVAILABILITY.

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(D) Purchaser's Percentage of Output shall be made available to the Purchaser by the District in accordance with the provisions and limitations in Appendix B hereof.

Section 5.02. **Delivery and Scheduling of Output.** The District shall arrange and be responsible for delivering Purchaser's Percentage of Output to the Transmission Point(s) of Delivery. The Purchaser shall Schedule, or arrange for Scheduling services with its Transmission Providers, to receive the Purchaser's Percentage of Output from the District at the Transmission Point(s) of Delivery, all as more particularly described in this Section. Transmission charges are specified in Article IX of this Agreement.

(A) The District shall, in its sole discretion, make all determinations concerning Rocky Reach's and Rock Island's Capacity and minimum generation requirements, and the District shall have the unilateral right to determine the maximum allowable amount of change in Output during any time period. Purchaser's Schedules shall be based on Purchaser's Percentage of Output in accordance with Rocky Reach's and Rock Island's operational parameters, District Slice Operating Instructions, and the District Business Practices established and updated by the District, in its sole discretion, from time to time.

(B) The Purchaser's Schedules shall not be less than Purchaser's Percentage of the sum of the minimum generation limits of the Chelan Power System as determined by the District, nor shall the sum of all Purchaser's schedules be greater than Purchaser's Percentage of the sum of the maximum generation limits of the Chelan Power System as determined by the District. Purchaser's Schedules are also subject to immediate curtailment in the event of an unplanned outage or other sudden reduction in the Capacity of Rocky Reach and/or Rock Island as a result of Operational Constraints or otherwise. Purchaser's Schedules are also subject to immediate increase in the event of a sudden increase in the minimum generation limits of Rocky Reach and/or Rock Island as a result of Operational Constraints or otherwise.

(C) If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, this subsection (C) does not apply. If the Purchaser's actual Schedules after curtailments and adjustments do not comply with this Section (either above the maximum generation limit or below the minimum generation limit), for any hour or portion thereof, the District, at its sole discretion may charge to the Purchaser non-compliance fees in addition to any imbalance charges assessed to Purchaser because of its Organized Market Participation by a market operator or similar entity. The amount of the non-compliance fees shall be calculated by the District for each hour using the following methodology: multiply the absolute value of the maximum 10-minute deviation in the hour (in MW), either over the maximum generation limit or under the minimum generation limit, by \$50/MW. If the Purchaser's actual hourly integrated Schedules do not comply with this Section, there will also be an Energy charge for the hourly deviation. The District and Purchaser shall enter into transactions to ensure that the Purchaser's actual integrated Schedules comply with this Section. The price for the Energy that the District provides to the Purchaser pursuant to this subsection will be the greater of Mid-Columbia Powerdex Real Time Hourly Index Price plus \$50/MWh or zero. The price for the Energy that the District receives from the Purchaser pursuant to this subsection will be the Mid-Columbia Powerdex Real Time Hourly Index Price minus \$50/MWh. If the Mid-Columbia Powerdex Real Time Hourly Index Price is no longer published or not primarily utilized by the industry, the District will select another industry recognized hourly index and notify Purchaser of the index to be used for all hours.

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(D) If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, Purchaser may use Purchaser's Percentage of Output to participate in an organized market, whether participation occurs by that other BAA joining an organized market, Purchaser offering Purchaser's Percentage of Output into the organized market as an external resource, or any other manner allowed within that organized market, provided that Purchaser's use of Purchaser's Percentage of Output also complies with the requirements of the Dynamic Transfer Agreement. If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, the remainder of this subsection (D) does not apply. During the Term of this Agreement, the District may, at its sole discretion, join, contract with, or enable third-party participation with a market operator or similar entity (e.g., joining an EIM or RTO) which would cause imbalances to be settled by a third party or pursuant to a different methodology. Purchaser shall be responsible for all charges, fees or costs attributable to Purchaser or imposed as a result of Purchaser's conduct as determined by the District. The District will invoice Purchaser for any charges, fees or costs assessed against the District related to Purchaser's activities or conduct. In addition, the District shall be entitled to assess Purchaser non-compliance fees related to Purchaser's Scheduling conduct calculated as set forth in this subsection (D) or District Business Practices.

(E) If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, this Section 5.02(E) does not apply. The amounts owing by the Purchaser to the District pursuant to this Article V shall be due and payable per Article VIII. Purchaser will take all Commercially Reasonable Efforts to comply with this Section 5.02. Persistent or repeated non-compliance by Purchaser with Section 5.02(B) shall also be an Event of Default by the Purchaser as further defined in Article XV. If Purchaser fails to comply with Section 5.02(B) for more than 20 hours in any month, the District may at its sole discretion triple the amount of any applicable non-compliance fee for the remainder of the month. Non-compliance by Purchaser due to unexpected reductions in Capacity or increases in minimum generation limits at Rocky Reach or Rock Island may be excused by the District in its sole discretion. Failure to comply with Section 5.02(B) for more than 60 cumulative hours in any three consecutive months shall constitute persistent non-compliance and an Event of Default by the Purchaser as further defined in Section 15.01(I) hereof. For the purposes of computing hourly totals in this subsection, if Purchaser fails to comply with Section 5.02(B) for any portion of an hour, that failure will be counted as if Purchaser had failed to comply for the whole hour.

(F) Pond/Storage Account.

(i) Purchaser shall be entitled to utilize the Purchaser's Percentage of Output of the Pond/Storage, as defined in Appendix B, available at Rocky Reach and Rock Island. The District shall make determinations concerning the minimum and maximum available Pond/Storage in accordance with Rocky Reach's and Rock Island's operational parameters. Purchaser shall make Commercially Reasonable Efforts not to exceed the Purchaser's Percentage of Output of Pond/Storage limits.

(ii) If Purchaser is utilizing Pond/Storage above or below the Purchaser's Percentage of Output of the Pond/Storage limits in any hour, it will be subject to a non-compliance fee for each hour the Purchaser exceeds or goes below the Purchaser's Percentage of Output of Pond/Storage limits. The amount charged to the Purchaser shall be calculated by the District and will be (a) \$3 per MWh for each MWh that the Purchaser's

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Pond/Storage account balance exceeds 115 percent of the Purchaser's Percentage of Output of the maximum Pond/Storage limit and (b) \$3 per MWh for each MWh that the Purchaser's Pond/Storage account balance is below the Purchaser's Percentage of Output of the Pond/Storage minimum limit. Purchaser will not be subject to such fees if it is directed by the District to be outside Purchaser's Percentage of Output of Pond/Storage limits.

(iii) The District will establish and maintain for Purchaser a Pond/Storage account that will reflect the use of Pond/Storage by the Purchaser associated with the Purchaser's Percentage of Output of Rocky Reach and Rock Island during the Term. The District will transfer 30 MWh of Pond/Storage from its Pond/Storage account to the Purchaser's Pond/Storage account in order to establish a starting balance.

(iv) The Purchaser must have a minimum Pond/Storage balance of 30 MWh on the last hour of the Term of this Agreement, which will then be transferred to the District's Pond/Storage account. If the Purchaser's Pond/Storage balance is less than 30 MWh, then the District will invoice the Purchaser for the shortage quantity (MWh) at an hourly price equal to the Powerdex hourly Mid-Columbia index (\$/MWh) or other recognized hourly index for the last hour of the Term. If the Powerdex hourly Mid-Columbia index is no longer published or primarily utilized by the industry, the District will select another industry recognized hourly index and notify Purchaser of the index to be used for all hours. The Purchaser shall make payment pursuant to Article VIII. The Purchaser may schedule more than its share of Rocky Reach and Rock Island hourly inflows, determined in accordance with Section 5.02(B), if the Purchaser has sufficient amount of Energy in its Pond/Storage account. The amount of the Energy scheduled from the Pond/Storage account shall not exceed the Purchaser's Percentage of Output of the sum of the maximum Capacity of the Chelan Power System.

(v) As allowed under COLA, the Purchaser may buy and/or sell Energy from its Pond/Storage balance from other Rocky Reach and Rock Island purchasers in order to manage its Pond/Storage balance. Transactions to transfer the Pond/Storage Energy (MWh) shall be made in accordance with COLA. COLA transfers from one account to another as directed by the Purchaser and supported by proper documentation. The Purchaser will be solely responsible to make all commercial arrangements for these transactions.

(G) During any hour that spill occurred at either Project due to any reason, the spill will be allocated to purchasers and the District according to COLA.

(H) The District may establish new, revised or additional District Business Practices and District Slice Operating Instructions that the District considers necessary. Changes may also be made to conform to mandatory Reliability Standards and any applicable business practices, criteria, and procedures of NERC, WECC, RC West, NWPP, and transmission service providers.

(I) In the event the Purchaser determines or has reason to believe that an error has occurred in the District's after-the-fact COLA accounting, the Purchaser shall notify the

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District immediately. The District will assist the Purchaser in determining if an error occurred and if so, assist in correcting the error. Any error correction as a result of such errors shall not include or give rise to any monetary compensation or other adjustments to the payments by the Purchaser.

(J) Purchaser shall provide to the District, on a real time basis, an estimate of Purchaser's projected hourly generation requests for Energy from the Chelan Power System at xx:20 PPT for the proceeding 96 hours. The accuracy of these hourly generation estimates shall meet the District's suggested targets.

(K) If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, this subsection (K) does not apply. During the Term of this Agreement, the District will allow up to eight tags sourced at its BAA during the Pre-Schedule Day time frame and up to three additional tags sourced at its BAA per hour during real-time.

(L) If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, this subsection (L) does not apply. Tags that sink in the District's BAA will only be allowed for the purpose of pond account management during real-time as defined by the District's Business Practices. One tag per hour is the limit for real-time tags. No preschedule tags that sink in the District's BAA are allowed.

(M) It is the Purchaser's responsibility to follow all RC West/WECC/NERC standards, guidelines, and criteria for scheduling and tagging applicable to Purchaser. Further, it is Purchaser's responsibility to follow all District Slice Operating Instructions and District Business Practices.

(N) If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, this subsection (N) does not apply. New real-time Schedules and adjustments to existing Schedules may be made upon request by the Purchaser but must be communicated and tagged by the Purchaser at least 30 minutes prior to the start of each hour except when specifically allowed by District Business Practices or directed by the District.

(O) If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, this subsection (O) does not apply. Purchaser must provide sufficient reserves to meet the applicable WECC and NERC reliability standards, NWPP Reserve Sharing Agreement obligations, District Business Practices, and District Slice Operating Instructions. The Purchaser's Percentage of Output of the maximum Capacity of the Chelan Power System will be reduced by the reserve obligation as described in the District Slice Operating Instructions.

(P) The hourly Canadian Entitlement obligation associated with Purchaser's Percentage of Output shall be counted toward meeting the Purchaser's Percentage of Output of the minimum generation limits of the Chelan Power System.

(Q) Scheduling Purchaser's Output with Hourly or Sub-hourly Schedules. If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, this subsection (Q) does not apply.

(i) Scheduling of Purchaser's Percentage of Output shall be as requested by the Purchaser, or its designated representative, and shall be subject to the

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limitations set forth in this Agreement. Purchaser must schedule its Purchaser's Percentage of Output by the use of hourly schedules unless a Dynamic Transfer Agreement or Organized Market Participation Operating Agreement is executed with the District as is described in subsection (R), (S) and (T).

(ii) The Purchaser, or its designated representative, shall provide the District each Pre-Schedule Day, in conformance with prevailing scheduling procedures for scheduling generating resources in the WECC region, hourly Schedules of desired Purchaser's Percentage of Output deliveries for the following day or days. The Schedules will be completed in a time frame consistent with standard industry practices in the WECC region and this Article V. Such Schedules shall be based on the Purchaser's rights to, and the limits of, Output, and on the probable water supply based on the District's forecasts of Rocky Reach and Rock Island inflow. The scheduling limits shall be as described in the District Slice Operating Instructions and the District Business Practices, as may be amended by the District from time to time.

(R) Scheduling Purchaser's Percentage of Output with Dynamic Signal

(i) Purchaser may Schedule all or a portion of Purchaser's Percentage of Output via a dynamic schedule. Dynamic schedules require Purchaser to execute a Dynamic Transfer Agreement with the District.

(ii) Purchaser may Schedule all or a portion of Purchaser's Percentage of Output by dynamic signal in accordance with applicable NERC, WECC, and RC West reliability criteria and in accordance with the requirements of this Article V and a Dynamic Transfer Agreement.

(S) Organized Market Participation. If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, this subsection (S) does not apply. If the District chooses to join, participate in, or facilitate third-party participation in an organized market during the Term of this Agreement, Purchaser's Percentage of Output will be subject to the terms of any agreements between the District and the market operator or similar entity. The decision to join any organized market, the terms and conditions of any applicable agreements, and the timeline for implementation shall be at the sole discretion of the District.

(T) Delivery of Purchaser's Percentage of Output via a Pseudo Tie

(i) Purchaser may elect to take Purchaser's Percentage of Output via a pseudo tie with a host BAA. A pseudo tie requires Purchaser to execute a Dynamic Transfer Agreement with the District. Terms and conditions of the Dynamic Transfer Agreement and timeline for implementation shall be at the sole discretion of the District and Purchaser shall reimburse the District for all costs associated with setup and implementation of the Dynamic Transfer Agreement.

(ii) The Purchaser shall preschedule and deliver Purchaser's share of the Canadian Entitlement from Purchaser's Percentage of Output and not from an alternate source. The District may request documentation of the source of such schedules.

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(iii) If Purchaser elects to take Purchaser's Percentage of Output via a pseudo tie with a host BAA, Purchaser shall preschedule and deliver its share of the Canadian Entitlement obligation from the Purchaser's host BAA to the District's BAA. This Canadian Entitlement Energy schedule shall be supplied by the Purchaser's Percentage of Output and not from an alternate source. The District may request documentation of the source of such schedules.

(U) Purchaser shall be solely responsible for any and all carbon, and/or carbon mitigation costs and obligations caused by Purchaser's schedules, imports or other activity impacting the District's BAA for any purpose. Purchaser shall reimburse the District for all costs and expenses incurred by the District as a result of any carbon, and/or carbon mitigation costs and obligations caused by Purchaser's schedules, imports or other activity impacting the District's BAA. Any amounts owing by the Purchaser to the District pursuant to this provision shall be due and payable per Article VIII. If the Purchaser pseudo-ties Purchaser's Percentage of Output to another BAA, this subsection (U) does not apply.

(V) Purchaser Allowable Start Cycles

(i) The Units at the Projects were designed for a limited number of Physical Start Cycles. The Purchaser shall be allocated 4350 Purchaser Allowable Start Cycles for any 24-month rolling period when Purchaser's Percentage equals twenty-five percent which is its pro-rata allocation of forecasted allowable Physical Start Cycles at the Projects. The Purchaser Allowable Start Cycles per calendar year may increase over the Term of this Agreement as units are rehabilitated.

(ii) The District shall provide the Purchaser a monthly assessment of its Purchaser Start Cycles. If the Purchaser Start Cycles exceed the Purchaser Allowable Start Cycles, as determined by the methodology in Appendix D, for any 24-month rolling period, or at any time at the Purchaser's request, the Parties shall meet to discuss conditions contributing to the frequency of Purchaser Start Cycles and potential solutions to reduce the frequency of Purchaser Start Cycles. In addition, if the Purchaser Start Cycles exceed the Purchaser Allowable Start Cycles for any 24-month rolling period, the Purchaser will pay \$1000 per Purchaser Start Cycle that exceeded the Purchaser Allowable Start Cycles (stated in December 2021 Dollars), as adjusted in accordance with the Escalation Factor set forth in Section 7.01(G)(iii) to the beginning of such Contract Year. If Purchaser Start Cycles exceed the Purchaser's Allowable Start Cycles in three or more 24-month rolling periods, which periods may overlap, the District may at its sole discretion consider this to be persistent non-compliance and an Event of Default by the Purchaser as further defined in Section 15.01(I) hereof.

Section 5.03. **Right to Resell.** Subject to the provisions of Section 15.02, Purchaser intends to, and shall have the right to, resell or re-market any portion of Purchaser's Percentage of Output provided to Purchaser by District under this Agreement and may retain the proceeds of such sales.

Section 5.04. **Step-up.** If a Share Participant (a "Defaulting Participant") defaults under a Related Power Sales Agreement and the District elects to terminate that Defaulting

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Participant's entitlement to Output, unless waived by the District at its option, the Purchaser shall purchase from the District, commencing on a date fifteen (15) days following written notice from the District (such date, the "Step-Up Effective Date"), Purchaser's pro rata share of the Output to which the Defaulting Participant was entitled from and after the Step-Up Effective Date, on the terms and conditions set forth in this Agreement, for a term equal to the lesser of the Defaulting Participant's remaining contract term or the remaining term of this Agreement; provided, that the Purchaser's Percentage as it may be increased pursuant to this Section shall not, without the written consent of Purchaser, exceed 40%.

For purposes of this Section 5.04, the Purchaser's pro rata share of a Defaulting Participant's Output entitlement (referred to herein as the "Purchaser's Step-up Percentage") shall be determined based on the Purchaser's Percentage divided by the sum of Purchaser's Percentage, the percentage of Output shares held by other Share Participants excluding the Defaulting Participant, and the Output share retained by the District. For example, if the Purchaser's Percentage is 25%, the Defaulting Participant's share is 10%, the District's share is 40% and the other Share Participants' shares are 25%, the Purchaser's Step-Up Percentage under this section would be:

$$10\% \times [(25\% \div (25\% + 40\% + 25\%))] = 2.78\%, \text{ to be added to Purchaser's Percentage}$$

For the avoidance of doubt, Purchaser shall not be liable for any amounts owed by the Defaulting Participant to the District (and Purchaser shall have no obligation or liability to perform any of the obligations under the Related Power Sales Agreement and no liability for any default or breach thereunder), and any amounts for which the Purchaser shall become liable under this Section 5.04 shall be determined under this Agreement and not under the Related Power Sales Agreement.

If as a result of a Share Participant's default under a Related Power Sales Agreement, the District elects to impose the step-up requirement pursuant to the terms of this Section 5.04, a portion of the damages recovered by the District (whether recovered by drawing on security, insurance, through litigation, or otherwise) directly attributable to the early termination of such Related Power Sales Agreement (net of reasonable costs and expenses to obtain such recovery), adjusted for the number of years remaining under this Agreement (if less than the period for which such damages were measured), shall be allocated to the Purchaser based on the Purchaser's Step-up Percentage and shall be credited against all future payments due from Purchaser hereunder that are attributable to Purchaser's Step-Up Percentage of such Output until such allocated recoveries have been exhausted. If the Purchaser contests its obligation to purchase the Purchaser's Step-up Percentage of the Defaulting Purchaser's share of Output, Purchaser's share of such recoveries shall be held by the District until Purchaser assumes (by instrument in form and substance satisfactory to the District) its Step-Up Percentage, and shall then be applied to future payment obligations in accordance with the preceding sentence. In the event any amount of the credit due to Purchaser pursuant to this paragraph cannot be credited against future payments due from Purchaser as a result of the expiration or termination of this Agreement, the District shall pay Purchaser any such amount within the later of thirty (30) days of the expiration or termination of this Agreement or thirty (30) days after the District obtains recovery from a third-party. This provision shall survive expiration or termination of this Agreement until fully satisfied.

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Section 5.05. **Environmental Attributes.** The Purchaser receives for its own use and benefit the Environmental Attributes associated with or related to the Purchaser's Percentage of Output of the Chelan Power System as provided herein. Any Renewable Energy Credits created and associated with the Purchaser's Percentage of Output will be transferred to the Purchaser on a mutually agreeable basis, but no more frequently than on a quarterly basis.

The Purchaser who receives the Environmental Attributes shall retain without limitation all reporting rights and use of these avoided emissions and/or renewable resources in any present or future federal or state compliance or voluntary program(s).

The District does not represent or provide any warranty whatsoever regarding the eligibility or use of the Environmental Attributes in any program or market. The District, upon the reasonable request of the Purchaser, will perform any further acts and execute and deliver such documents that may be necessary to carry out the intent and purpose hereof. If the Purchaser requests reasonable actions that require the District to expend substantial time or retain outside expertise, in the District's sole discretion, the Purchaser shall be required to pay those costs in advance of the work being started.

Section 5.06. **No Guaranteed Output.** As more particularly described in Section 5.01, the District does not guarantee any amount of Output to Purchaser. The Parties acknowledge and agree that there will be variability in the amount of Output that may be available at any given time and that, consequently (i) there may be times that the Output may be insufficient to meet Purchaser's needs and commitments, during which Purchaser may be required to make supplemental power purchases to satisfy its requirements, (ii) there may also be times that there is Output available that exceeds Purchaser's needs and commitments, (iii) that the District shall make all determinations concerning the Chelan Power System's available Output and minimum generation requirements, and that the District shall have the unilateral right to determine the maximum allowable amount of change in Output during any time period, and (iv) that Purchaser's Scheduling shall be based on Purchaser's Percentage of Output as determined by the District based on its consideration of the Chelan Power System's operational parameters, the District's Slice Operating Instructions, and the District's Business Practices as established and revised by the District from time to time. Purchaser acknowledges and agrees that it has made its own economic operating and supply decisions in light of the foregoing, with full knowledge of the consequences of those decisions in terms of the credit and operational issues.

Section 5.07. **No Reliance Upon District Information.** The District will periodically make available to Purchaser, upon request, existing data readily available to the District regarding water and generation forecasting as well as known Chelan Power System outages, scheduled maintenance and other relevant operational information. The District shall not be liable for any inaccuracies in the data, scheduling, operating and other information or projections and forecastings. Purchaser shall be solely responsible for forecasting the Output available to it at any given time.

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ARTICLE VI CURTAILMENT AND DECOMMISSIONING

Section 6.01. **Curtailment.** The District shall have the right, in its sole discretion, to temporarily interrupt, reduce or suspend delivery (through manual operation, automatic operation or otherwise) of Output from the Chelan Power System during any one or more of the following circumstances: (i) to prevent damage to the District's system or to maintain the reliable and safe operation of the District's system; (ii) a District System Emergency; (iii) if suspension is required for relocation, repair or maintenance of facilities or to facilitate restoration of line outages; (iv) a force majeure event; (v) any Operational Constraints as described in Appendix B; (vi) negligent acts or intentional misconduct of Purchaser, or any Person operating at its direction or under its control, which are reasonably expected to present imminent threat of damage to property or personal injury; (vii) an Event of Default by the Purchaser, as provided in Section 15.01, or a Potential Event of Default by the Purchaser, or (viii) any other reason consistent with Prudent Utility Practice. Any available Output during each such interruption, reduction or suspension shall be allocated pro rata among the District, the Purchaser and the other Share Participants, except and to the extent the District determines (or had determined at any time prior to such interruption, reduction or suspension) in its sole discretion that due to a District System Emergency such pro-rata allocation of remaining Output due to such interruption, reduction or suspension is impracticable or infeasible, or to the extent that any such interruption, reduction or suspension arises from an Event of Default by Purchaser or a Potential Event of Default by Purchaser. The District shall give advance notice, as circumstances permit, of the need for such suspension, reduction or interruption to employees of the Purchaser designated from time to time by the Purchaser to receive such notice. The District shall not be responsible for payment of any penalty or cost incurred by the Purchaser during or as a result of such interruption, reduction or suspension. The provisions contained in this Section 6.01 shall not limit or modify the scope of and limitations on the District's obligations hereunder as otherwise set forth in Sections 5.01(C), Article XII and Section 21.01.

Section 6.02. **Restoration of Service.** The District and, to the extent applicable, Purchaser shall endeavor to restore deliveries of Output as promptly as is reasonably possible in the event of an interruption, reduction or suspension under Section 6.01.

Section 6.03. **Decommissioning.** Over the Term of this Agreement, the District may, in its sole discretion, cause components of the Project responsible for not more than 20% of the Output in the aggregate to be Permanently Retired. The District may also cause the Projects, or any components thereof, to be Permanently Retired if, as a result of the adoption or implementation of, or a change in, any Law, rule or regulation, or any policy, guideline or directive of, or any change in the interpretation or administration thereof by, any Government Authority (in each case, having the force of Law) (collectively a "Change in Law"), the District would be required to make material modifications to such Projects or components in order to continue their operation, and the District determines in good faith that, absent such components being Permanently Retired, it would not be Commercially Reasonable, as otherwise herein defined, to comply with such statutory or regulatory requirements. In each case, the District shall give Purchaser as much advance written notice of its determination to Permanently Retire Projects or components as reasonably practicable. During months when Project Nameplate is less than 90%

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of 1978.4 MW due to units being Permanently Retired, the Fixed Annual Charge shall be reduced as follows. The “Fixed Annual Charge Reduction Factor” is a percentage reduction equal to 1 minus the product of 100/90 times the ratio of Project Nameplate divided by 1978.4 MW, all times 100. Expressed as a formula,

$$\text{Fixed Annual Charge Reduction Factor} = (1 - (100/90) \times (\text{Project Nameplate}/1978.4)) \times 100.$$

For example, if Nameplate Capacity = 1582.7 MW, then Fixed Annual Charge Reduction Factor = $(1 - (100/90) \times (1582.7/1978.4)) \times 100 = 11.1\%$ reduction. This Fixed Annual Charge Reduction Factor is then multiplied by the Fixed Annual Charge shown in Appendix E and the resulting amount is subtracted from the Fixed Annual Charge to calculate the value to be used in Section 7.01(A).

Decommissioning will not change the methodology to calculate Net Costs.

ARTICLE VII PAYMENT

Section 7.01. **Payments and Charges.** In consideration of the District’s agreement to provide Purchaser with Purchaser’s Percentage of Output, the Purchaser agrees to pay the District the following charges at the times and in the amounts specified below:

(A) **Fixed Annual Charge.** The Purchaser shall pay to the District each month of each Contract Year as part of its monthly invoice in accordance with Section 8.01(A) an amount equal to one twelfth (1/12th) of the Purchaser’s Percentage of the Fixed Annual Charge shown in Appendix E, as may be reduced pursuant to Section 6.03.

(B) **Working Capital Charges.** The Purchaser will pay Working Capital Charges as follows:

(i) Ten (10) Business Days before the Delivery Start Date, Purchaser shall pay the District, by wire transfer in immediately available funds, an amount equal to the Purchaser’s Percentage of the initial Working Capital Charge of \$32,000,000 (stated in December 2021 Dollars), as adjusted in accordance with the Escalation Factor set forth in Section 7.01(G)(iii) to such Delivery Start Date.

(ii) The initial Working Capital Charge payments pursuant to subsection (i) above constitutes the Purchaser’s Percentage of the amount the District deems necessary as of the Signing Date to provide an adequate working capital balance for the Chelan Power System.

(iii) In addition, following the commencement of each Contract Year after the Delivery Start Date, Purchaser shall pay the District, an additional Working Capital Charge equal to the Purchaser’s Percentage of the amount, if any, by which \$32,000,000 (stated in December 2021 Dollars), as adjusted in accordance with the Escalation Factor set forth in Section 7.01(G)(iii) to the beginning of such Contract Year exceeds the sum of the Working Capital Charges previously paid pursuant to this subsection 7.01(B). The additional Working Capital Charge will be due and payable in

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accordance with Section 8.01(A) and included on a monthly invoice no later than the first quarter of each Contract Year.

(iv) From time to time during any Contract Year, Purchaser shall pay to the District, by wire transfer in immediately available funds or, at the District's discretion, by monthly invoice in accordance with Section 8.01(A), upon demand by the District, an amount equal to the Purchaser's Percentage of any additional Working Capital Charge that is necessary to provide an adequate level of working capital for the Chelan Power System as determined by the District in accordance with Prudent Utility Practice.

(v) The payments described in this Section are sometimes referred to in this Agreement as a "Working Capital Charge" or collectively as "Working Capital Charges."

(C) Net Costs. Purchaser shall pay monthly to the District during each Contract Year, an amount equal to the Purchaser's Percentage of Net Costs determined in accordance with Appendix A hereto.

(D) Coverage Fund Charge. The District shall establish and maintain, one or more coverage funds or their equivalents into which shall be deposited the Coverage Amount with respect to the Debt Obligations (collectively, the "Coverage Fund"). The Purchaser will pay the Purchaser's Percentage of the Coverage Amount as follows:

(i) Ten (10) Business Days before the Delivery Start Date, Purchaser shall pay the District, by wire transfer in immediately available funds, the Purchaser's Percentage of the Coverage Amount (calculated as of such Delivery Start Date) attributable to Debt Obligations for the Chelan Power System. The District shall notify the Purchaser of such required amounts at least 30 days prior to the Delivery Start Date.

(ii) In addition, upon the issuance or incurrence during any Contract Year of any additional Debt Obligations attributable to the Chelan Power System by the District after the Delivery Start Date, Purchaser shall pay to the District, by wire transfer in immediately available funds, within thirty (30) days of written demand by the District or on a monthly invoice in accordance with Section 8.01(A), an amount equal to the positive difference, if any, between (1) the product of (a) the Purchaser's Percentage, times (b) the Coverage Amount (calculated as of the issuance or incurrence of such additional Debt Obligations), minus (2) the amounts previously paid by the Purchaser pursuant to this subsection 7.01(D).

All amounts paid by the Purchaser to the District pursuant to this subsection 7.01(D) shall be used for any lawful purpose as determined by the District in its sole discretion.

(E) Transmission Charges. Purchaser shall pay monthly to the District during each Contract Year all amounts due and payable pursuant to Article IX of this Agreement.

(F) Debt Reduction Charge. The Purchaser shall pay to the District each month of each Contract Year as part of its Periodic Payments an amount equal to one twelfth (1/12th) of the Purchaser's Percentage of an annual debt reduction charge (the "Debt Reduction Charge"),

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which Debt Reduction Charge shall be computed by multiplying the Debt Reduction Charge Percentage by the Debt Reduction Charge Obligations for such Contract Year. In addition, upon the issuance or incurrence during any Contract Year of any additional Debt Reduction Charge Obligations, the Purchaser shall pay as part of its Periodic Payments an amount equal to the positive difference, if any, between (a) the Purchaser's Percentage of the annual Debt Reduction Charge at the beginning of the Contract Year and (b) the Purchaser's Percentage of the annual Debt Reduction Charge calculated as of the first day of the month following issuance or incurrence of such additional Debt Reduction Charge Obligations. The District shall include any such additional Debt Reduction Charge amounts resulting from additional Debt Obligations in Periodic Payments within forty-five days from the issuance or incurrence of such Debt Obligation. The Debt Reduction Charge collected by the District pursuant to this section shall be held by the District in a separate fund or account to be known as the "Debt Reduction Charge Account" and used only to purchase, redeem or defease Debt Obligations, to fund required deposits to Reserve and Contingency Funds for the Chelan Power System or to fund Capital Improvements related to the Chelan Power System, in each case as determined by the District.

For purposes of this Section:

(i) **"Debt Reduction Charge Percentage"** means 3%.

(ii) **"Debt Reduction Charge Obligations"** means, a) for any Contract Year, the aggregate principal amount of all Debt Obligations outstanding as of the first day of such Contract Year, and b) upon the issuance or incurrence during any Contract Year of any additional Debt Obligations, the aggregate principal amount of all Debt Obligations outstanding as of the first day of the month following the issuance or incurrence of additional Debt Obligations during such Contract Year, all determined in accordance with Sections 2(b)(i) and (ii) of Appendix A, as such principal amount may have theretofore been reduced in accordance with Section 2(c) of Appendix A.

(G) **Capital Recovery Charge**. The Purchaser shall pay to the District each month of each Contract Year as part of its Periodic Payments an amount equal to one twelfth (1/12th) of the Purchaser's Percentage of an annual capital recovery charge (the "Capital Recovery Charge"), which Capital Recovery Charge shall be computed by multiplying the Capital Recovery Charge Percentage for the Contract Year in which such month occurs by the Capital Recovery Charge Base for such Contract Year. The Capital Recovery Charge shall be held by the District in a separate fund or account to be known as the "Capital Recovery Charge Account" and used only to purchase, redeem or defease Debt Obligations, to fund required deposits to Reserve and Contingency Funds for the Chelan Power System, or to fund Capital Improvements related to the Chelan Power System, in each case as determined by the District.

For purposes of this Section:

(i) **"Capital Recovery Charge Percentage"** means 50%.

(ii) **"Capital Recovery Charge Base"** means a base amount equal to \$44,000,000 in 2021 dollars. The Capital Recovery Charge Base, as the same may be adjusted from time to time pursuant to the methodology specified in the

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following paragraph, shall be adjusted annually as of the first day of each Contract Year by the Escalation Factor.

In addition to adjustments resulting from the Escalation Factor, the District, at its discretion, may from time to time adjust for a material shift in the Capital Recovery Charge Base for a Contract Year by giving written notice to the Purchaser at least 180 days prior to the commencement of such Contract Year. Any such adjustment shall not increase the Capital Recovery Charge Base to an amount greater than the District's estimate, made in good faith, of its average annual Capital Improvement requirements over the next ensuing thirty (30) Fiscal Years. Such estimate shall be as computed in real dollars adjusted to be effective as of the first day of such Contract Year. The Capital Recovery Charge Base, as so adjusted, shall remain in effect thereafter unless and until subsequently adjusted pursuant to this paragraph or the immediately preceding paragraph. Adjustments for future annual Capital Improvements shall not result in the duplication of payments for such future Capital Improvements.

(iii) **“Escalation Factor”** means the percentage change in relative value of the Consumer Price Index using the non-seasonally adjusted US City Average Index for All Urban Consumers (All Items, Base Period 1982-84 = 100, Series Id: CUUR0000SA0), as published by the U.S. Department of Labor, Bureau of Labor Statistics, computed annually in accordance with the following formula:

$$EF = \text{CPI} \div \text{CPI-b}$$

Where:

EF = the Escalation Factor,

CPI = the most recently published consumer price index identified above, in effect as of the date of annual computation

CPI-b = “278.802”, the consumer price index identified above for the base month of December 2021
(<http://data.bls.gov/cgi-bin/surveymost?bls>) as shown in Attachment 1.

Should the index referred to above be discontinued or be substantially modified, then an alternate index shall be chosen by the District in its discretion that reasonably tracks the methodology used to track the consumer price index identified above prior to such modification or discontinuance to maintain the purchasing power of one dollar at a constant level, considering the nature of expenses incurred in the acquisition, construction and installation of Capital Improvements of the Chelan Power System.

If the Capital Recovery Charge Base is recalculated pursuant to the second paragraph of clause (iii) above, CPI-b for the calculation of the Escalation Factor for the then current and each succeeding Contract Year (until further changed in accordance with this provision) for purposes of determining the Capital Recovery

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Charge Base shall be changed to the CPI Index number for the December immediately preceding the commencement of the Contract Year in which such recalculation occurs.

(H) Notwithstanding the provisions of Section 7.01(F) and (G) to the contrary, the Purchaser shall not be obligated to pay the Purchaser's Percentage of the Debt Reduction Charge and the Capital Recovery Charge in any month if, and only to the extent that, the aggregate value of unspent cash and investments on deposit in the Debt Reduction Charge Fund and the Capital Recovery Charge Fund as of the 15th day of the immediately preceding month exceeds:

(i) five (5) times the Capital Recovery Charge Base for the monthly periods during the Term ending prior to November 1, 2047 (periods until 5 years prior to the contract expiration date);

(ii) four (4) times the Capital Recovery Charge Base for the monthly periods beginning November 1, 2047 and ending prior to November 1, 2048;

(iii) three (3) times the Capital Recovery Charge Base for the monthly periods beginning November 1, 2048 and ending prior to November 1, 2049;

(iv) two (2) times the Capital Recovery Charge Base for the monthly periods beginning November 1, 2049 and ending prior to November 1, 2050; and

(v) one (1) times the Capital Recovery Charge Base for the monthly periods beginning November 1, 2050 and ending prior to November 1, 2051.

For purposes of the foregoing, funds shall be deemed "spent" when (i) costs are paid or incurred for Capital Improvements, or (ii) costs are committed to be expended for qualified costs pursuant to contracts for design, engineering, acquisition and/or construction of such Capital Improvements, but only to the extent that such costs are expected by the District to be paid or incurred prior to the expiration of the Term, or (iii) funds are applied to the purchase, redemption or defeasance of Debt Obligations.

(I) Debt Administrative Charge. The Purchaser shall pay the District monthly during each Contract Year, in addition to the Net Costs and other amounts described in this Section 7.01, an administrative charge equal to one-twelfth of Purchaser's Percentage multiplied by the Rate per annum, set forth in the level below corresponding to the Rating, of the principal balance of the Debt Obligations outstanding at the beginning of such Contract Year, as determined by the District. In addition, upon the issuance or incurrence during any Contract Year of any additional Debt Obligations, the Purchaser shall pay as part of its Periodic Payments an amount equal to the positive difference, if any, between (a) the Purchaser's Percentage of the annual Debt Administrative Charge at the beginning of the Contract Year and (b) the Purchaser's Percentage of the annual Debt Administrative Charge calculated as of the first day of the month following issuance or incurrence of such additional Debt Obligations. The District shall include any such additional Debt Administrative Charge amounts resulting from additional Debt Obligations in Periodic Payments within forty-five days from the issuance or incurrence of such Debt Obligation.

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<u>Level</u>	<u>Moody's Rating</u>	<u>S&P Rating</u>	<u>Fitch Rating</u>	<u>Rate</u>
1	Aa3 or above	AA- or above	AA- or above	0.50%
2	A3 to A1	A- to A+	A- to A+	0.75%
3	Baa3 to Baa1	BBB- to BBB+	BBB- to BBB+	1.50%

For purposes of the foregoing, the term “Rating” will mean the lowest long term unenhanced debt ratings assigned by any of the Rating Agencies to the Purchaser. In the event of a split in the Rating of the Purchaser (i.e., one of the foregoing Rating Agencies’ ratings of the Purchaser is at a different Level than such rating by the other Rating Agencies), the Rate will be based upon the Level in which the lowest rating appears. Any change in the Rate resulting from a change in the Rating will become effective as the first day of the month following the date of the announcement of such change in the Rating. Upon any change in the Rate during any Contract Year, the Purchaser shall pay as part of its Periodic Payments an amount equal to the positive difference, if any, between (a) the Purchaser’s Percentage of the annual Debt Administrative Charge in effect in the month prior to the Rate change and (b) the Purchaser’s Percentage of the annual Debt Administrative Charge calculated as of the first day of the month following the change in the Rate. The District shall include any such additional Debt Administrative Charge amounts resulting from any Rate change in Periodic Payments within forty-five days from the date of such Rate change.

References to ratings above are references to rating categories as determined by the Rating Agencies at the date hereof, and, in the event of adoption of any new or changed rating system by any Rating Agency, each of the Ratings referred to above from such Rating Agency will be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category in effect on the date hereof as determined in good faith by the District.

In the event that either (i) the Rating is suspended, withdrawn or otherwise unavailable from any Rating Agency for a credit related reason or (ii) there shall have occurred and be continuing any Event of Default, in each such case, the Rate shall be 3.00% per annum on the first day of the month following the date of the occurrence of such suspension, withdrawal, unavailability or Event of Default, in a manner consistent with other Rate changes in this section 7.01(I).

Section 7.02. **Unconditional Obligations.** All Periodic Payments and any other amounts due and payable per this Agreement shall be payable by Purchaser, whether or not the Purchaser can receive, accept, take delivery of or use all or any portion of such Output, regardless of curtailments, shutdowns, force majeure events or other operational, regulatory or financial circumstances that may affect the Purchaser, and whether or not any of the Projects are operable or operating or the operation thereof is interrupted, suspended, interfered with, reduced or curtailed, in whole or in part, at any time for any reason during the Term of this Agreement (including, without limitation, events of force majeure); provided, however, that the foregoing shall not affect the rights of Purchaser to pursue a claim against the District for damages upon the occurrence of an Event of Default by the District with respect to any of its obligations hereunder. The Periodic Payments and any other amounts due and payable by Purchaser pursuant to this

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Agreement for any month, shall be independent of and not related to the amount of Output, if any, delivered to Purchaser hereunder during such month.

Section 7.03. **Final Payment.** Within ninety (90) days following the expiration or earlier termination of this Agreement, Purchaser shall pay to the District any and all Periodic Payments accrued but unpaid and any other amounts due and payable per the Agreement, net of any credits due to Purchaser as of the date of such expiration or termination. The District shall provide Purchaser with a special invoice identifying any such costs and credits within sixty (60) days following the expiration or termination date. This Section does not apply to termination payments calculated and due under Section 15.03.

Section 7.04. **Post Adjusting Invoices/Credits.** The District reserves the right to provide Purchaser post adjusting invoices/credits derived from financial, statutory or other required audits performed for the Fiscal Years in which the expiration of this Agreement or the earlier termination of this Agreement occurred. If such post adjusting invoices/credits show a payment due to the District from the Purchaser or a credit due to the Purchaser from the District, the payment or credit shall be due and payable within thirty (30) days of Purchaser's receipt of such invoice/credit.

Section 7.05. **Use of Funds by District.** Except as otherwise provided in this Section 7 and in Appendix A, the District may use the Periodic Payments and any other amounts paid to the District hereunder in any manner that the District, in its sole discretion, shall determine.

Section 7.06. **Disposition of Fund Balances Upon Expiration or Termination of Agreement.** Upon the expiration or prior termination of the Agreement at any time for any reason, all amounts collected pursuant to this Agreement, including, but not limited to, amounts deposited and on hand in any debt service, reserve, capital, coverage or other fund or account maintained by or on behalf of the District, shall be retained by the District. Purchaser shall have no right, interest or claim in or to any such amounts or any interest or earnings thereon, except as set forth in this Agreement.

Section 7.07. **Investment of Certain Funds.** The District agrees, to the extent consistent with applicable Law, to invest and keep invested in a manner consistent with the District's investment policies in effect from time to time, any unexpended amounts of the Debt Reduction Charges and Capital Recovery Charges during any Contract Year.

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA**ARTICLE VIII
BILLING AND PAYMENT**

Section 8.01. **Billing of Periodic Payments.** Periodic Payments shall be billed as follows:

(A) **Monthly Invoices; Periodic Payments.** On or prior to the tenth (10th) day of each Month, or if the tenth (10th) day of a Month is not a Business Day, on the next succeeding Business Day, the District shall submit to the Purchaser, by electronic transmission, a monthly invoice setting forth the Periodic Payments incurred by the District and any other amounts due and payable pursuant to this Agreement. Costs incurred but not actually known by the date of the invoice may be estimated, subject to reconciliation the following month or months, as actual costs become known by the District.

The Purchaser shall pay each month the amount then due as shown on the District's invoice, by electronic funds transfer to the District's account as directed by the District. All monthly invoices shall be due and payable to the District by 5:00 p.m. (Pacific prevailing time (PPT)) on the twentieth (20th) day of each Month in which the District's monthly invoice is received or, if the invoice was submitted late, ten (10) days after submittal of the invoice, or if such day is not a Business Day, on the next succeeding Business Day (the "Due Date"). Failure of the District to submit an invoice as scheduled shall not be an Event of Default or release the Purchaser from liability for payment of the invoice by the Due Date.

(B) **Late Charges and Interest.** If payment in full is not received on or before the District's close of business on a Due Date, a delayed payment charge of two percent (2%) of the unpaid amount of the invoice shall be assessed to the Purchaser. Interest shall accrue on all past due statements at a rate equal to the lesser of 1.5% per month or the maximum rate allowed by law. Should Purchaser fail to pay any invoice as provided in Section 8.01(A), the District shall send a notice of such failure to pay to the Purchaser. If payment due to the District remains unpaid 3 Business Days after the Due Date, the District may thereafter suspend delivery of the Purchaser's Percentage of Output until payment in full of all amounts due and owing (including late charges and any interest) is received by the District.

(C) **Payments Unconditional.** The Periodic Payments shall accrue, and the Purchaser shall be obligated to make such payments through the date of termination of this Agreement, irrespective of the condition of the Chelan Power System and whether or not they are capable of producing any Output for any reason. This provision shall not constitute a waiver of the Purchaser's right to seek damages for a breach by the District of its obligations hereunder.

(D) **True-Up.** Within thirty (30) days after the finalization of financial, statutory or other required audits for each Fiscal Year, the District shall compute any amounts that should have been included as charges or credits in the monthly invoices to Purchaser during such Fiscal Year. If a balance is computed, the District will prepare and submit to Purchaser a true-up calculation containing any such expenses and credits (the "Annual True-Up"). If such Annual True-Up shows a payment due to the District from the Purchaser, the Annual True-Up shall be included on the next monthly invoice and will be due and payable in accordance with Section 8.01(A); provided that if this Agreement has then expired, the District shall issue a final Annual

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True-Up invoice and the Purchaser shall make a payment by electronic funds transfer of such amount to the District within thirty (30) days of the date of such calculation and Purchaser's receipt of such final Annual True-Up invoice. If such Annual True-Up shows a credit due to the Purchaser from the District, such credit shall be reflected as a deduction on the monthly invoice due the month(s) after the final Annual True-Up is calculated until such credit is exhausted; provided that if this Agreement has then expired or expires prior to such credit being exhausted, the District shall make a refund by electronic funds transfer of such amount to the Purchaser within thirty (30) days of the date of such calculation.

(E) Corrections. The District may make corrections for expenses and credits discovered by either Party in invoices or Annual True-Ups in each of the prior three (3) Fiscal Years. No adjustments for or with respect to expenses, credits or energy exchanges will be made with respect to any Fiscal Year ending earlier than the third Fiscal Year preceding the Fiscal Year to which the current audit pertains.

Section 8.02. Accounting. The District shall cause proper books and records of account to be kept for each of the Projects by the District. Such books and records of account shall be kept in accordance with the rules and regulations established by any Government Authority authorized to prescribe such rules including, but not limited to, the Division of Municipal Corporations of the State Auditor's Office of the State of Washington or such other Washington State department or agency succeeding to such duties of the State Auditor's Office. The District shall also maintain books and records in conformity with GAAP and, at the District's sole discretion, in accordance with the Uniform System of Accounts prescribed by FERC or such other federal agency having jurisdiction over electric utilities owning and operating properties similar to the District's electric properties. The District shall cause such books and records of account to be audited by independent certified public accountants, experienced in electric utility accounting, to be retained by the District. The audits to be made by such certified public accountants, as above mentioned, shall be made annually and shall cover each Fiscal Year during the Term of this Agreement. At the Purchaser's written request, the District shall deliver a copy of each such annual audit, including any recommendations of the auditors with respect to the Project to Purchaser promptly after it is received by the District.

Section 8.03. Audits by Purchaser. The District shall provide or cause to be provided all information that Purchaser may reasonably request to substantiate all invoices, adjustments and claims under this Agreement related to the Chelan Power System. Purchaser shall, upon notice, have the right to audit, at its sole cost and expense, upon reasonable notice and during normal business hours following the receipt of an Annual True-Up, and District shall make or cause to be made available any and all books and records related to the Chelan Power System which directly relate to the determination of Net Costs as set forth in Appendix A and are reasonably necessary for verification of charges and costs included in invoices or amended invoices rendered under this Agreement or verification of Purchaser's or the District's compliance with this Agreement; provided, however, that Purchaser shall coordinate its rights under this section with the other Share Participants in order to conduct joint, rather than individual, audits pursuant to this provision. The District shall also cooperate with Purchaser in its efforts to verify the charges imposed pursuant to Section 7.01 of this Agreement. Any Annual True-Up not challenged within three (3) years following its date shall be considered final. Any audit shall, at the option of Purchaser and at Purchaser's expense, be performed by designated employees,

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consultants or agents of Purchaser that Purchaser determines in its discretion are experienced in utility practices. Upon request, District will be entitled to review the complete audit report and any supporting materials.

Section 8.04. **No Interest In System.** This Agreement is for a sale of Output as described in Article V. Nothing in this Agreement is intended to grant to Purchaser any rights to or interest in any specific District project, facility or resource.

Nothing in this Agreement shall be construed to create a partnership, association or joint venture with Purchaser, or any ownership interest or other legal right in Purchaser with respect to any existing District facility, project or resource, including but not limited to, the Chelan Power System or the Projects.

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA**ARTICLE IX
INTERCONNECTION AND TRANSMISSION**

Section 9.01. **Transmission.** This Article IX describes the terms and conditions for all transmission service utilized to deliver Purchaser's Percentage of Output to the Transmission Point(s) of Delivery.

Section 9.02. **Type of Service; Scheduling.** Transmission service and Scheduling of Output, including any temporary changes in Transmission Point(s) of Delivery, shall be made in accordance with the provisions of Article V and Appendix B hereof.

Section 9.03. **Transmission Reservation and Payment Obligation.** The Purchaser has the ability to use the Chelan Transmission System for delivery of Purchaser's Percentage of Output, as determined consistent with Appendix B. Purchaser's transmission reservation is the product of Purchaser's Percentage times Project Nameplate, which the District shall reserve for Purchaser. Commencing on the Delivery Start Date and continuing each month throughout the Term, Purchaser shall pay Chelan Transmission Rate Schedules, Schedule 1: Scheduling, System Control and Dispatch Service and Schedule 7: Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service or then current applicable rates schedules for transmission capacity reserved and services provided for Purchaser in accordance with the then current Chelan Transmission Rate Schedules.

Section 9.04. **Third Party Transmission Service.** Purchaser is responsible for obtaining all necessary transmission capacity, arranging scheduling, and paying associated costs to transmit all Energy obtained from its Purchaser's Percentage of Output from the Transmission Point(s) of Delivery to Purchaser's system or any alternate point of receipt.

Section 9.05. **Project Transmission Facilities.** Project Transmission Facilities are required to transmit Project Output from the Project generating Units to the Chelan Transmission System. Purchaser shall pay a pro-rata share, equal to its Purchaser's Percentage of Output, of the costs of construction, maintenance and upkeep of Project Transmission Facilities as part of Net Costs and shall be entitled to use the same share of the electric capacity. Project Transmission Facilities are depicted on Appendix C. Any unused capacity on Project Transmission Facilities shall be available for use by the District without restriction and without cost to the District.

Section 9.06. **Chelan Transmission Service.** Commencing on the Delivery Start Date and continuing throughout the Term, the District shall provide transmission service on the terms provided in this Article IX, which is intended to be comparable to Firm Point-To-Point Transmission Service in a manner consistent with Section 14.3 of the District OATT, to transmit Output from Chelan Power System to Transmission Points of Delivery. Purchaser may participate in bidirectional power flows over the Chelan Transmission System relating to Output and in furtherance of this Agreement, including (i) coordinated-system operations under the PNCA for as long as Purchaser shall remain a signatory to that agreement; (ii) fulfillment of Purchaser's obligations to the District under the Canadian Entitlement Allocation Extension Agreement; (iii) pond management as allowed by Article V; and (iv) return of transmission and transformation losses as required by this Article IX. Output power supplied hereunder shall be approximately 230 kV or 115 kV, three-phase, alternating current, at approximately 60 hertz. The Output to be

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delivered hereunder shall be made available to Purchaser, at its option exercisable from time to time, at any one or more of the following Transmission Points of Delivery, subject to transmission limitations as determined by the District:

(A) Cascade (formerly White River) – Rocky Reach 230 kV Transmission Line (Puget Sound Energy interconnection)

Location: The point(s) where the Chelan Transmission System interconnects with Puget’s Cascade – Rocky Reach 230 kV transmission line in the vicinity of the Rocky Reach Switchyard

Voltage: 230 kV

(B) Maple Valley – Rocky Reach 230/345 kV Transmission Line (BPA interconnection)

Location: The point(s) where the Chelan Transmission System interconnects with BPA’s 230/345 kV step-up transformer facilities that in turn feed BPA’s Maple Valley – Rocky Reach 230/345 kV transmission line in the vicinity of the Rocky Reach Switchyard

Voltage: 230 kV

(C) Rocky Reach – Columbia #2 230 kV Transmission Line (BPA interconnection)

Location: The point(s) where the Chelan Transmission System interconnects with BPA’s 230 kV bus in the vicinity of BPA’s Columbia Substation

Voltage: 230 kV

(D) Chelan Rocky Reach – Columbia #2 230 kV Transmission Line (Grant contractual interconnection)

Location: The point(s) where the Chelan Transmission System interconnects with Grant County PUD’s Columbia – Wanapum 230 kV line in the vicinity of BPA’s Columbia Substation

Voltage: 230 kV

(E) Rocky Reach – Columbia #1 230 kV Transmission Line (BPA interconnection)

Location: The point(s) where the Chelan Transmission System interconnects with BPA’s Rocky Reach – Columbia 230 kV line in the vicinity of the Rocky Reach Switchyard

Voltage: 230 kV

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(F) Rocky Reach – Douglas 230 kV Tie Line (Douglas PUD interconnection)

Location: The point(s) where the Chelan Transmission System interconnects with Douglas County PUD's 230 kV system in the vicinity of the Rocky Reach Switchyard

Voltage: 230 kV

(G) Valhalla Substation (Rock Island) (BPA interconnection)

Location: The point(s) where the Chelan Transmission System interconnects with BPA at 115kV in the vicinity of the BPA 115kV Switchyard and McKenzie 115kV Switchyard.

Voltage: 115 kV

(H) At any other location mutually agreed to by the District and Purchaser.

Section 9.07. **Transmission Service Curtailment**. For purposes of implementing curtailment under this section and under Section 14.6 of the District OATT, transmission service under this Agreement shall have the same priority as Firm Point-To-Point Transmission Service. In the event that a curtailment on the Chelan Transmission System and/or Project Transmission Facilities, or a portion thereof, is required to maintain reliable operation of such system and the system directly and indirectly interconnected with the Chelan Transmission System, curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint. The District may elect to implement such curtailments pursuant to their adopted transmission loading relief procedures. If multiple transactions require curtailment, to the extent practicable and consistent with Prudent Utility Practice, the District will curtail service to network customers and customers taking firm point-to-point transmission service on a basis comparable to the curtailment of service to the District's native load customers. All curtailments will be made on a non-discriminatory basis, however, non-firm point-to-point transmission service shall be subordinate to firm transmission service. When the District determines that an electrical emergency exists on the Chelan Transmission System and/or the Project Transmission Facilities and implements emergency procedures to curtail firm transmission service, the Purchaser shall make the required reductions upon request of the District. However, the District reserves the right to curtail any firm transmission service provided, in whole or in part, when, in the District's sole discretion, an emergency or other unforeseen condition impairs or degrades the reliability of the Chelan Transmission System and/or the Project Transmission Facilities. The District will notify the Purchaser in a timely manner of any scheduled curtailments.

Each Party shall use reasonable efforts in accordance with Prudent Utility Practice to notify the other Party as soon as practicable of any condition on, or affecting, its electric system that has caused, or is likely to cause, a curtailment and to minimize the duration of any such curtailment.

Curtailment by the District in accordance with this Section 9.07 shall not reduce or otherwise affect Purchaser's obligations to make Periodic Payments required under this Agreement.

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Section 9.08. **Losses.** The District shall account for transmission and transformation losses on the Chelan Transmission System by applying the Transmission Loss Factor to Output, metered at the Transmission Points of Delivery. The Purchaser shall preschedule and deliver transmission and transformation losses from Purchaser's Percentage of Output and not from an alternate source unless otherwise agreed upon by the District. The District may request documentation of the source of such schedules. Losses may be settled financially upon mutual agreement of the Parties.

Section 9.09. **Power Flows at Points of Delivery.** The Parties acknowledge that power transfers scheduled at a Transmission Point of Delivery may result in power flows at other Transmission Points of Delivery and at Third Party Parallel Transmission Interconnections. The Parties agree that the net interchange between their electric systems, including all power transfers, shall be accommodated simultaneously among all Transmission Points of Delivery and all Third Party Parallel Transmission Interconnections, subject to the following conditions:

(A) no power transfer between the Parties' respective electric systems will be permitted to the extent it creates an Unacceptable Operating Condition or other adverse impact on either Party's electric system;

(B) to the extent power transfers between the Parties' respective electric systems create an Unacceptable Operating Condition on an interconnected electric system of any third party, the Parties will work with each other to address the Unacceptable Operating Condition;

(C) the Party receiving a power transfer must have in place all commercial arrangements necessary for the transmission and scheduling of such power transfer from generator to load;

(D) each Party must comply with all applicable Balancing Authority Area accepted scheduling procedures for scheduling power transfers between Balancing Authority Areas; and

(E) each Party must possess, and be prepared to exercise, sufficient responsibility such that the Party is able to redispatch resources, curtail load, or take other actions sufficient to minimize any resulting change to power flow at Transmission Points of Delivery that, without such actions, would result in a District System Emergency or Unacceptable Operating Condition.

Section 9.10. **Harmonic Control.** Each Party shall design, construct, operate, maintain and use its electric system in accordance with Prudent Utility Practice to reduce to acceptable levels the harmonic currents and voltages that pass into the other Party's electric system. Harmonic reductions shall be accomplished with equipment that is specifically designed and permanently operated and maintained as an integral part of the electric system of the Party that owns the electric system on which harmonics are generated.

Section 9.11. **Prior Notice of Corrective O&M Action.** In the event that either Party determines in the operation or maintenance of its electric system that the operations contemplated in this Agreement will cease in any respect to be consistent with Prudent Utility Practice, or if either Party is so notified by its Balancing Authority, such Party shall promptly

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notify the other Party and, as necessary, its Balancing Authority, specifically indicating the corrective action needed. If the Parties cannot agree on specific corrective action to be taken, the matter shall be addressed through the dispute resolution process in Article XVI; provided, however, that while any dispute resolution process is pending resolution, either Party may exercise the rights, as appropriate, reserved to it under Article IX of this Agreement.

Section 9.12. **System Disconnection.** The Parties' electric systems shall normally be operated in parallel at each Transmission Point of Delivery; provided, however, that each Party shall have the right to disconnect its electric system at one or more Transmission Points of Delivery, for as short a time as possible under the circumstances, under the following conditions:

(A) in the event of any breach by the other Party of any material provision of this Agreement;

(B) at the request of a Party's Balancing Authority in accordance with Prudent Utility Practice and following applicable procedures;

(C) at the direction of RC West;

(D) in the event of a District System Emergency;

(E) upon the operation of automatic protective devices, including RAS, on the electric facilities at the Transmission Point of Delivery, which will open the interconnection until the cause of their operation has been identified and eliminated; or

(F) if required in order to investigate, inspect, maintain, install new equipment, repair, or replace existing equipment, or to perform other construction or installation, provided that a Party shall give Balancing Authority and the other Party reasonable advance notice whenever possible prior to performing any operation that may affect any Transmission Point of Delivery.

Section 9.13. **Unplanned System Disconnection.** The Parties shall identify and eliminate promptly the causes of any unplanned disconnection and restore their electric systems to parallel operation as soon as practicable consistent with Prudent Utility Practice.

Section 9.14. **Operating Emergency Authority.** In the event of imminent danger to life or damage to facilities due to, and for the duration of, a District System Emergency or as a result of a force majeure event, a Party or its Balancing Authority may take such immediate action on its electric system as it determines necessary to mitigate or eliminate the District System Emergency or the effects of a force majeure event.

Section 9.15. **Responsibility for Changes in Facilities.** If changes in transmission delivery voltages, relocation of facilities serving a Transmission Point of Delivery, or other changes in transmission facilities are necessary on one Party's side of a Transmission Point of Delivery because of changes to such Party's electric system as a result of Prudent Utility Practice, such changes shall be made by such Party at its sole expense except as otherwise agreed by the Parties or as may be recoverable through generally applicable transmission rates or charges.

Section 9.16. **RTO or ISO.** If the District chooses to join or otherwise place the

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Chelan Transmission System under the direction or control of a centralized transmission system operator (e.g., RTO or ISO), Purchaser's use of the Chelan Transmission System will be subject to the terms of any agreements between the District and the transmission system operator or similar entity. Any costs incurred by the District will be charged to Purchaser proportional to Purchaser's Percentage. In the event that the District recovers some or all of costs previously charged to Purchaser the District will credit Purchaser proportional to Purchaser's Percentage. The decision to join any RTO or ISO, the terms and conditions of any applicable agreements, and the timeline for implementation shall be at the sole discretion of the District.

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**ARTICLE X
CONTROL, OPERATION AND MAINTENANCE OF THE SYSTEM**

Section 10.01. **Control, Operation and Maintenance of the Chelan Power System.**

Subject to the provisions of Sections 5.06, 6.01 and 6.03, and Article IX, the District shall operate and maintain the Chelan Power System in accordance with Prudent Utility Practices and shall use Commercially Reasonable Efforts consistent with Prudent Utility Practice to keep the Chelan Power System in good operating condition at all times. The District shall use Commercially Reasonable Efforts consistent with Prudent Utility Practice to perform such operations and maintenance in an efficient, economical and workmanlike manner; and the District shall make such repairs, renewals, additions, improvements and replacements of Project components as the District determines in its sole discretion.

Nothing in this Agreement shall be construed to grant Purchaser any right of control over the operation or maintenance of or repairs, renewals, additions, improvements or replacements to any of the District's generation, transmission or distribution facilities or the financing for such activities. All deliveries shall be subject to the District's curtailment rights set forth in Article VI.

Following the Delivery Start Date, the District shall provide Hydro Production Reports and a Capital Spending Forecast on a quarterly basis to the Purchaser. At the request of Purchaser, the District shall meet with representatives of Purchaser on a semi-annual basis. All such meetings shall be held at the District's headquarters office, or such other location, and at a date and time as the Parties may mutually agree. The District may elect to schedule such meetings with other Share Participants, but it shall not be obligated to do so. The District's representatives shall attend and provide information concerning past and future expenditures, budgets, operations, maintenance, capital projects and other matters related to the Chelan Power System, as reasonably requested by Purchaser. Meetings initiated pursuant to this paragraph shall not exceed eight (8) hours duration without the District's consent. At such meetings, Purchaser may make recommendations to the District concerning the operation and maintenance of, and repairs, renewals, additions, improvements and replacements to, the Chelan Power System. Nothing herein shall be construed to create any implied obligations by the District with respect to the Purchaser's recommendations.

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ARTICLE XI RELICENSING SUPPORT AND COOPERATION

Section 11.01. **Relicensing Support.** The District shall follow Prudent Utility Practice in obtaining and maintaining licenses and permits for operation of the Projects during the Term in accordance with this Agreement. In connection with the foregoing, Purchaser acknowledges that the District's current FERC license for Rock Island expires on December 31, 2028, and that the District intends to seek a new license for Rock Island. In light of the fact that the Output with respect to each of the Projects is material to this Agreement, Purchaser covenants and agrees to use Commercially Reasonable Efforts, at its cost and expense, to support the District's efforts to obtain a new license for Rock Island, at such times during the Term and in such manner as the District shall reasonably request in writing. Such support may include, but shall not be limited to, providing letters or other written statements of support and written or oral testimony before FERC or in other administrative or legal proceedings, and participation in and statements of support at public meetings.

Section 11.02. Cooperation.

(A) **Regulatory.** Each Party covenants and agrees to act reasonably in support of any request by the other Party for review or approval by any Government Authority of this Agreement (or costs incurred hereunder), including but not limited to any election on the part of Purchaser to seek a rate of return for its obligations under this Agreement pursuant to RCW 80.28.410.

(B) **Canadian Entitlement.** The District is engaged in activities to reduce the Canadian Entitlement it is required to return under the Canadian Entitlement Allocation Extension Agreement. Purchaser covenants and agrees to provide reasonable support for the District's efforts to obtain a reduction in Canadian Entitlement at such times and in such a manner as the District reasonably requests in writing.

(C) **Value.** The District and Purchaser each further agree to provide reasonable support for the efforts of the other in proceedings and forums that improve the value of this Agreement when such support can be reasonably provided. Examples of opportunity for such mutual support include proceedings or forums related to use of renewable energy, resource adequacy, and market formation. If a Party requests support in writing, the Parties will meet and confer to determine whether support is appropriate and form of action the support should include. The Parties are not required to present joint or unified comments or positions in common proceedings or forums. Neither Party shall be required to take a position or make a statement that it determines is contrary to its interests.

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**ARTICLE XII
RISK OF LOSS AND DISCLAIMER OF WARRANTIES**

Section 12.01. **Risk of Loss.** The District represents and warrants that it will deliver the Purchaser's Percentage of Output sold hereunder to Purchaser free and clear of all liens, claims, and encumbrances arising prior to the delivery of such Output at the Transmission Point(s) of Delivery. Risk of loss associated with the Purchaser's Percentage of Output shall transfer from the District to Purchaser at the point such Purchaser's Percentage of Output reaches the Transmission Point(s) of Delivery. Purchaser shall bear all risk of all occurrences of any nature (including force majeure or any other event beyond the reasonable control of either Party) affecting any interconnection facilities, substations, transmission lines, and other facilities on Purchaser's side of the applicable Transmission Point(s) of Delivery. For the avoidance of doubt, the risk of loss pursuant to the foregoing shall not reduce or otherwise affect the Purchaser's Periodic Payments and any other amounts due and payable as described in this Agreement.

The District shall not be liable to Purchaser for any damages or losses sustained by Purchaser or its customers or third parties as a result of the curtailment, reduction, or interruption of Output or transmission.

Section 12.02. **Disclaimer of Warranties.** Except as otherwise expressly set forth herein, the District disclaims any and all warranties beyond the express terms hereof, including any implied warranties of merchantability or fitness for a particular purpose, and all other warranties with regard to all Energy and Capacity and other Output made available to Purchaser pursuant to this Agreement are hereby expressly disclaimed.

The Parties confirm that the express remedies and measures of damages provided in this Agreement against the Purchaser, and the express limitations as to remedies and damages provided in this Agreement with respect to the District, in each case satisfy the essential purposes hereof. For breach of any provision hereof for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. Except as otherwise expressly provided herein, the obligor's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy, and all other remedies or damages at law or in equity are waived.

THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, IN FACT OR BY LAW WITH RESPECT TO THE OUTPUT PROVIDED HEREUNDER. DISTRICT HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES WHATSOEVER.

The limitations contained in this Section 12.02 shall be in addition to, and not in lieu of, the provisions of Section 5.01(C), Article VI and Article XXI.

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ARTICLE XIII ASSIGNMENT

Section 13.01. **Assignment.** Neither the Purchaser nor the District shall, by contract, operation of law, or otherwise, assign this Contract or any right or interest in this Contract without the prior written consent of the other Party; provided, however, that the District may without the consent of the Purchaser (and without relieving itself from any obligations hereunder) pledge or encumber this Contract or the accounts, revenues, or proceeds hereof in connection with any financings or other financial arrangements. The District may not unreasonably withhold or delay its consent to assignment.

Section 13.02. **Change in Control.** In the event that (i) a Change in Control shall occur or become likely to occur at any time during the Term; (ii) a Downgrade Event occurs at any time prior to a Change in Control or within 180 days after a Change in Control; and (iii) at least one Rating Agency attributes such Downgrade Event to the Change in Control or the possibility of Change in Control, Purchaser must obtain the District's written consent, not to be unreasonably withheld or denied, for such Change in Control by the later of 15 days after the date (a) the Change in Control occurs; or (b) the Downgrade Event occurs. Failure to obtain the District's timely consent in accordance with the foregoing is an Event of Default with respect to Purchaser under Section 15.01(F). After a Downgrade Event attributed by a Rating Agency to a Change in Control, Purchaser may, by written notice, request the District to grant written consent for such Change in Control. If the District has not provided Purchaser with a written rejection of such request within fifteen (15) days of the District's receipt of such request, then the District will be deemed to have granted such consent to the Change in Control, provided that Purchaser's request for consent will not extend the time by which the District's consent must be obtained under this section. If multiple Downgrade Events occur on separate dates with respect to a single Change in Control or potential Change in Control, the earliest Downgrade Event shall be used for purposes of calculating the deadline for obtaining the District's consent in this section.

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TAXES AND INSURANCE**

Section 14.01. ***Taxes.*** Except as expressly set forth in Section 2 of Appendix A, each Party shall be responsible for payment of and bear any federal, state and local taxes that it shall accrue or incur as a result of the purchase and sale of Output under this Agreement.

Section 14.02. ***Insurance Required.***

(A) Purchaser shall acquire and maintain during the Term in full force and effect, at its sole cost and expense, comprehensive general liability insurance that includes operations, products and contractual liability, explosion, collapse, and underground hazards, broad form property damage, sudden and accidental pollution and personal liability, with a minimum combined single limit of \$10,000,000 per occurrence and not less than \$20,000,000 in the aggregate. Each such policy shall be primary to and shall not contribute to any insurance that may otherwise be maintained by, or on behalf of, the District. All insurance required hereunder shall contain provisions waiving the insured's and the insurer's rights of subrogation or recovery of any kind against the District, its Affiliates and their respective directors, trustees, agents, employees, officers, successors and assigns. Self-insurance may be substituted for all or any part of the insurance requirements under this Section 14.02(A) consistent with any generally applied self-insurance program of Purchaser. Purchaser will provide the District with a summary of insurance coverages in force on an annual basis. The District acknowledges and agrees that the Purchaser's current program of insurance and self-insurance, as of the Signing Date, is consistent with and satisfies the foregoing provisions of this Section 14.02(A).

(B) The District shall maintain an insurance and/or self-insurance program with respect to the Chelan Power System for property damage, general liability, and other risks as, consistent with Prudent Utility Practice, the District may determine and the District's Commissioners may approve. The District's current program of insurance and self-insurance includes the following:

(i) **General Liability.** The District shall carry commercial general liability insurance for bodily injury and property damage with a minimum limit equal to \$5,000,000 (United States dollars) for each occurrence. The deductible shall not exceed the District's financial ability to cover claims.

(ii) **Property.** The District shall carry all-risk property insurance for repair or replacement of the Projects. The limit of property insurance shall be consistent with Prudent Utility Practices. The deductible shall not exceed the District's financial ability to fund the cost of losses.

(iii) **Employers' Liability and Workers' Compensation Insurance** providing statutory benefits in accordance with the laws and regulations of the State of Washington.

(iv) **Qualifying Insurance.** The insurance coverage shall be obtained from an insurance company(ies) rated AM Best A-, VII or better. Commercial general liability insurance shall include an endorsement naming Purchaser as an additional insured

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and loss payee as applicable.

The Purchaser acknowledges and agrees that the District's current program of insurance and self-insurance meets requirements of this Agreement.

Section 14.03. **Certificates of Insurance.** On or prior to the Delivery Start Date, each Party will provide to the other Party certificates of insurance evidencing the required coverage set forth above. Each Party shall endeavor to ensure that its certificates of insurance shall provide for a minimum of thirty (30) days advance notice to such other Party of cancellation or material change in coverage. Failure by either Party to obtain the insurance coverage or certificates of insurance required by this Article XIV shall not relieve such Party of the insurance requirements set forth herein or therein or in any way relieve or limit such Party's obligations and liabilities under any other provision of this Agreement. If the insurance coverage required by Article XIV is lost or lapses for any reason, the Party will immediately notify the other Party in writing of such loss or lapse. Such notice shall advise the other Party of (i) the reason for such loss or lapse and (ii) the steps the Party is taking to replace or reinstate coverage. If self-insurance is utilized to meet requirements of this Article, the self-insuring Party shall provide, upon request, current audited financial statements and applicable self-insurance program documentation. If a self-insuring Party, at any time throughout the Term of this Agreement, no longer maintains acceptable self-insurance for the purposes of meeting requirements within this Article, such Party agrees to maintain commercial insurance in lieu of self-insurance.

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**ARTICLE XV
DEFAULT AND TERMINATION**

Section 15.01. ***Events of Default.*** An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

(A) the failure of Purchaser to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after receipt of written notice;

(B) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(C) the failure of such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within 30 days after receipt of written notice;

(D) with respect to such Party, (i) an adjudication of bankruptcy or insolvency, or the entry of an order for relief, under any Bankruptcy Law with respect to such Party; (ii) the making by such Party of an assignment for the benefit of its creditors; (iii) the filing by such Party of a petition in bankruptcy or for relief under any Bankruptcy Law; (iv) the filing by such Party of an answer or pleading admitting or failing to contest the material allegations of any petition in bankruptcy or for relief under any Bankruptcy Law filed against such Party; (v) the general inability of such Party to pay its debts as they fall due; (vi) the filing against such Party of any petition in bankruptcy or for relief under any Bankruptcy Law; (vii) the appointment of a liquidator, administrator, trustee, conservator or receiver for such Party or for all or any substantial portion of its assets, provided, however, that nothing in this Section 15.01(D)(vii) shall alter, amend or modify any other provision herein, including, but not limited to, Section 15.01(D)(iii) herein; or (viii) the taking by such Party of any action for its winding up or liquidation, or the consent by such Party to any of the actions described in clauses (i) through (vii) being taken against it. In the case of proceedings described in clause (vi), or appointments described in clause (vii), instituted by a Person or entity other than such Party, an Event of Default will not be considered to have occurred and be continuing if such Party promptly (and in any event within 30 days) seeks to dismiss such proceedings or vacate or stay such appointment, and such proceedings are dismissed or such appointment is vacated or stayed within 60 days after commencement thereof. “Bankruptcy Law” means any applicable state or federal bankruptcy or insolvency statute;

(E) the failure of such Purchaser to [REDACTED], and the Collateral Annex;

(F) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and/or assigns to another entity without the express written consent of the other Party pursuant to Article XIII or, with respect to Purchaser, Purchaser suffers a Change in Control without the District’s written consent to the extent such consent is required by Section 13.02;

(G) the occurrence and continuation of event of default, however defined, in

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respect to any Slice Contract, WSPP Transaction, or any other transaction between the Parties relating to the purchase or sale of power;

(H) the failure of the Purchaser to perform its obligations to take the Purchaser's Percentage of Output under Section 5.01 of this Agreement and such failure is not cured within three (3) Business Days after written notice thereof to the Purchaser, provided that Purchaser shall have an additional twenty (20) Business days if (a) the failure cannot reasonably be cured with the three (3) Business Day period despite diligent efforts, (b) the default is capable of being cured within the additional twenty (20) Business day period, and (c) the Purchaser is at all times thereafter diligently and continuously proceeding to cure the failure;

(I) the failure of the Purchaser to (i) perform its obligations under Section 5.02 or Appendix B of this Agreement (other than Section 5.02(B)), (ii) comply with Section 5.02(B) for more than sixty (60) cumulative hours in any three consecutive months, (iii) comply with a Dynamic Transfer Agreement or Organized Market Participation Operating Agreement or (iv) maintain Purchaser Allowable Start Cycles thresholds required in Section 5.02(V) and such failure under (i) or (iii) is not cured within three (3) Business Days after written notice thereof to the Purchaser, without regard to whether the Purchaser has paid charges for such violations as provided in this Agreement, an Organized Market Participation Operating Agreement or a Dynamic Transfer Agreement. For the purposes of computing hourly totals in this subsection, if Purchaser fails to comply with Section 5.02(B) for any portion of an hour, that failure will be counted as if Purchaser had failed to comply for the whole hour;

(J) the occurrence of any default, Event of Default, or [REDACTED] (however defined) under any Collateral Annex; or

The decommissioning or Permanent Retirement of one or both Projects pursuant to Section 6.03 shall not constitute a breach of this Agreement.

Section 15.02. **Remedies upon Default.**

(A) **District's Remedies.** The District may, upon a Potential Event of Default, immediately suspend deliveries of Output to Purchaser and sell such Output to third parties in any Commercially Reasonable manner and permanently retain funds received from such sales for the suspension period until the default is cured. If the price received for the Output, net of administrative fees, costs and expenses, as determined by the District, is less than amounts owed by the Purchaser under this Agreement with respect to such Output, the Purchaser shall pay the District the difference. If an Event of Default by the Purchaser occurs, the District, in addition to and not in lieu of its other remedies available at law or in equity, may elect to: (i) terminate one or more transactions between the Parties, including this Agreement, Slice Contracts and WSPP Transactions and, if it elects to terminate this Agreement, calculate a termination payment as set forth in Section 15.03 below and any termination payment and other payments due upon termination as described in this Agreement and other terminated agreements or transactions; or (ii) seek specific performance or maintain successive proceedings for payment of amounts due. If the District chooses to terminate this Agreement, the District may terminate other transactions between the Parties and, if the District so elects, payments due and owing or accrued by the District under such other transactions shall be netted and set off against the amounts the Purchaser owes the

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District hereunder. If the District terminates this Agreement, the District shall calculate and include in the net termination payment its loss, if any, for the period between the Event of Default and the calculation date of the net termination payment. The loss will be calculated by comparing the amounts owed by the Purchaser under this Agreement with respect to such Output to the Day Ahead Mid-C Peak Index Price and Day Ahead Mid-C Off-Peak Index Price for the respective hours. If the Day Ahead Mid-C Peak Index Price and Day Ahead Mid-C Off-Peak Index Price is no longer published or primarily utilized by the industry, the District will select another industry recognized index and notify Purchaser of the index to be used for this calculation. Payment of these amounts by Purchaser shall be made by Purchaser to the District in accordance with the provisions for electronic funds transfer set forth in Section 8.01(A).

(B) Purchaser's Remedies. If an Event of Default by the District occurs, the Purchaser may elect to seek specific performance or maintain successive proceedings for enforcement of the District's obligations. If the Purchaser obtains a binding, unappealable order requiring the District to perform, the Purchaser shall be entitled to receive from the District a payment reflecting the market price of the amount of Output required to be delivered by the District to Purchaser hereunder during the period of time that such deliveries did not occur, less the amount of Periodic Payments and any other amounts due and payable accruing hereunder for such period. The District may net such payments against any amounts the Purchaser then owes the District under this Agreement. The market price of that Output shall be calculated at a rate equal to the Day Ahead Mid-C Peak Index Price and Day Ahead Mid-C Off-Peak Index Price for the respective hours plus the Carbon-Free Adjustment and the Capacity Adjustment, as defined in the Collateral Annex and at values applicable as of the respective days(s). If the Day Ahead Mid-C Peak Index Price and Day Ahead Mid-C Off-Peak Index Price is no longer published or utilized by the industry, the Purchaser will select another industry recognized index and notify the District of the index to be used for this calculation, provided that if such replacement index includes exclusively carbon-free energy, the Carbon-Free Adjustment will not apply.

(C) Notwithstanding any other provision contained herein, the Purchaser hereby waives any right it may have to terminate this Agreement as a result of a default by the District and agrees to limit its remedies related to any such default solely to claims for damages, specific performance or injunctive or equitable relief as herein expressly provided.

(D) Except as otherwise expressly provided herein, no right or remedy conferred upon or reserved to a Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing, upon the occurrence of any Event of Default. Failure of either Party to insist at any time on the strict observance or performance by the other Party of any of the provisions of this Agreement, or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt by the District of any payment required to be made hereunder with knowledge of the breach of any provisions of this Agreement, shall not be deemed a waiver of such breach. In addition to all other remedies provided in this Agreement, each Party shall be entitled, to the extent permitted by applicable Law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions of this Agreement, or to a decree requiring performance of any of the provisions of this Agreement or to any other remedy legally allowed to such Party.

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDASection 15.03. *Calculation of District's Loss upon Termination.*

(A) The Parties recognize that the District has a number of options to sell the Output, and has relinquished those options in connection with the execution of this Agreement. Thus, in the event of an early termination of this Agreement for any reason, other than a District Event of Default to the extent herein contemplated, the Purchaser agrees to compensate the District for its losses using the methodology contained in this Section 15.03. Such losses, if any, will be impossible to definitively calculate at any given termination date given the number of technical, economic and market variables that must be considered, including the Output, future Chelan Power System costs as described in Appendix A, and future market pricing. The Parties agree to this methodology, as liquidated damages and not as a penalty, to reasonably estimate and justly compensate the District for the losses it will incur. Purchaser has agreed, as part of the consideration it is willing to offer the District for its execution of this Agreement, to waive any corresponding losses or damages Purchaser may otherwise suffer as a result of the early termination of this Agreement for any reason and to limit its remedies to those provided in Section 15.02(B). If the District terminates this Agreement pursuant to Section 15.02(A), the District shall be entitled to recover from the Purchaser the full amount of its loss, if any, resulting from the early termination of this Agreement. The Parties recognize that it will be difficult to calculate those losses with absolute precision and agree that the District's good faith determination of such losses, based on the methodology set forth in this Section 15.03, shall be conclusive and binding on the Parties, absent manifest error.

(B) The District's losses and costs upon such termination shall be determined, in the District's sole discretion, either:

(i) based on its assessment of the cost of replacing the defaulting Purchaser with a new creditworthy participant who is willing to assume the obligations of the defaulting Purchaser under this Agreement. Such costs shall include, among other items, upfront incentive payments the District reasonably believes it will be required to pay to entice a substitute Purchaser to assume the defaulting Purchaser's obligations hereunder, the present value (calculated at the Present Value Rate pursuant to Section 15.03(I)) of pricing discounts and other concessions that the District reasonably believes will be required to entice a substitute Purchaser to assume such obligations, the legal fees and expenses anticipated to be incurred by the District in effectuating such substitution, and all other losses, costs and expenses that have been, and that the District reasonably believes will be, incurred in connection with such default, termination and substitution, or

(ii) using the methodology outlined in Appendix A to the Collateral Annex. Plus the District's estimated loss, if any, related to the remarketing of Purchaser's Percentage of Output for the remainder of the month in which the termination occurred.

(C) All such losses and costs will be determined by the District in good faith, using Commercially Reasonable procedures, in order to arrive at a Commercially Reasonable result.

(D) Amounts due and owing by the defaulting Purchaser as of the date of termination, together with all legal fees, costs and expenses incurred by the District, arising out of

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or as a result of such default in connection with the enforcement of this Agreement and the protection of its rights hereunder (including all costs of collection) shall be in addition to the losses calculated in accordance with Clause (B) above.

(E) In determining its losses, the District may consider any relevant information, including, without limitation, one or more of the following types of information:

(i) quotations (either firm or indicative) for assumption of the Purchaser's obligations hereunder, supplied by one or more third parties that take into account the status of the Chelan Power System, the District's existing and anticipated Net Costs, the creditworthiness of the District at the time the quotation is provided and any other factors then existing or anticipated that are relevant to the third party providing such quotation;

(ii) information consisting of relevant market data in the relevant market supplied by one or more third parties, including, without limitation, relevant existing and projected rates, prices, yields, yield curves, volatilities, spreads, correlations and other relevant market data, and the current and anticipated future regulatory environment;

(iii) the methodology outlined in Appendix A to the Collateral Annex;
or

(iv) information of the types described in the clauses (i) or (ii) above from internal sources if that information is of the same type used by the District in the regular course of its business for evaluating power sales contracts.

(F) The District will consider, taking into account the standards and procedures described above, quotations pursuant to Clause (E)(i) above or relevant market data pursuant to Clause (E)(ii) above or the Collateral Annex base methodology in Clause (E)(iii) above, unless the District reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in Clause (E)(i), (ii), (iii) or (iv) above, the District may include costs of funding, to the extent it would not be a component of the other information utilized. Third parties supplying quotations pursuant to Clause (E)(i) above or market data pursuant to Clause (E)(ii) above may include, without limitation, wholesale purchasers in relevant markets, end-users of electric energy, information vendors, brokers, and other sources of market information.

(G) In making the calculations under this Section 15.03, the step-up provisions of Section 5.04 shall be ignored.

(H) If the District determines that its losses, as determined using the foregoing methodology, are negative (meaning that the District will benefit economically from such termination), no amounts will be due by either Party with respect to such losses, and the Purchaser's liability shall be limited to (i) amounts due and owing and accrued as of the date of termination, plus (ii) attorney's fees and expenses and other collection costs associated with Purchaser's breach, plus (iii) the District's reasonable costs of calculating such losses.

(I) Present Value Rate. The losses calculated pursuant to this section shall be

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discounted to present value using the Present Value Rate as of the time of termination. The “Present Value Rate” shall mean the sum of 0.50% 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 8:00 a.m. PPT for the United States government securities having a maturity that matches the average remaining term of this Agreement.

(J) Notice of Loss Calculation; Due Date. The District shall notify the Purchaser of its calculation of losses as soon as possible after termination and shall supply the Purchaser with a summary analysis of the methodology used in such calculations. The Parties recognize that it will be extremely difficult to precisely determine the amount of actual damages and loss that would be suffered by the District if the Purchaser’s default gives rise to a termination of this Agreement as contemplated in this Article XV, and agree that the District’s reasonable determination of such losses, using the methodology pursuant to this Section 15.03, is a fair and reasonable method of determining of the amount of actual damages that would be suffered by the District in such event. The loss methodology is intended to measure the anticipated damages actually suffered from a termination and is not intended to constitute a penalty or forfeiture. The amount owed after netting and setoff pursuant to Clause (L) below shall be due within three (3) Business Days of delivery of such notice and payment shall bear interest at the Present Value Rate from the effective date of the notice of termination until the amount is paid in full. Payment to the District shall be made by electronic funds transfer to the District’s account as instructed by the District.

(K) Accruals Prior to Termination. Any amounts payable by Purchaser under this Section 15.03 shall be in addition to, and not in lieu of, any amounts accrued but unpaid as of the date of termination.

(L) Setoff and Netting. The District shall aggregate or set off any other amounts owing between the Parties under this Agreement or any other agreement between the Parties terminated under Section 15.02(A) so that all such amounts are aggregated and/or netted into a single liquidated termination payment. Any Performance Assurance held by or on behalf of the District will be ignored for purposes of calculating a net termination payment. For avoidance of doubt and as contemplated in Clause (H), setoffs and netting contemplated in this Section 15.03 shall not include or take into account any net economic or other benefits the District may realize from termination of this Agreement.

(M) District Election to Pay Over time. If the District owes the Purchaser monies after set offs and netting of all terminated agreements, then notwithstanding the three (3) Business Day payment requirement detailed above, the District may elect to make payments to the Purchaser the monies owed under this Section 15.03 after set offs and netting of all terminated agreements over a period of time up to three (3) years in equal monthly installments without interest, with the first payment being due on the due date as provided in Clause (J), above. The District shall give written notice to the Purchaser of this election with two (2) Business Days of the notice provided in Clause (J). The written notice will include a payment schedule.

If the District elects to make payments over time, the Present Value Rate referenced in Section 22.3(b) in the WSPP Agreement and Clause (I) above or in any other terminated agreement shall not be reflected in determining the amounts to be paid.

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This provision and the rights and obligations under it shall survive termination of any applicable transactions or agreements.

If the District fails to make a payment under this Clause (M), then Purchaser shall have the right, by providing written notice to the District at any time after the District fails to pay, to require payment of all monies owed under all of the contracts subject to this Section (M) within three (3) Business Days of receipt of the written notice. The monies to be paid under this accelerated payment provision shall be the remaining amounts to be paid under the contracts or agreements reflecting a discount using the Present Value Rate from the date of the written notice.

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ARTICLE XVI DISPUTE RESOLUTION

Section 16.01. ***General.*** Any dispute arising out of, or relating to, this Agreement, with the exception of those specifically excluded under this Agreement, shall be subject to the dispute resolution procedures specified in this Article XVI. Each Party retains the right, after making a good faith effort at resolving the dispute pursuant to the terms of this Article XVI, to pursue such other actions and remedies otherwise permitted or authorized by law or equity.

Section 16.02. ***Good-Faith Negotiations.*** The Parties shall first negotiate in good faith to attempt to resolve any dispute, controversy or claim arising out of, under, or relating to this Agreement (a “Dispute”), unless otherwise mutually agreed to by the Parties. In the event that the Parties are unsuccessful in resolving a Dispute through such negotiations, either Party may proceed immediately to litigation concerning the Dispute.

The process of “good-faith negotiations” requires that each Party set out in writing to the other its reason(s) for adopting a specific conclusion or for selecting a particular course of action, together with the sequence of subordinate facts leading to the conclusion or course of action. The Parties shall attempt to agree on a mutually agreeable resolution of the Dispute. A Party shall not be required as part of these negotiations to provide any information which is confidential or proprietary in nature unless it is satisfied in its discretion that the other Party will maintain the confidentiality of and will not misuse such information or any information subject to attorney-client or other privilege under applicable Law regarding discovery and production of documents.

The negotiation process shall, unless otherwise mutually agreed, include at least two (2) meetings to discuss any Dispute. Unless otherwise mutually agreed, the first meeting shall take place within ten days after either Party has received written notice from the other of the desire to commence formal negotiations concerning the Dispute. Unless otherwise mutually agreed, the second meeting shall take place no more than ten days later. In the event a Party refuses to attend a negotiation meeting, either Party may proceed immediately to litigation concerning the Dispute.

Section 16.03. ***Confidentiality and Non-Admissibility of Statements Made in, and Evidence Specifically Prepared for, Good Faith Negotiations.*** Each Party hereby agrees that, to the full extent permitted by law, all statements made in the course of good faith negotiations, as contemplated in Section 16.02, shall be Confidential Information and shall not be disclosed, except as provided in Section 19.01 and except that such statements may be disclosed to or shared with any third party whose presence is necessary to facilitate the negotiation process. Each Party agrees and acknowledges that no statements made in or evidence specifically prepared for good faith negotiations under Section 16.02 shall be admissible for any purpose in any subsequent litigation.

Section 16.04. ***Other Recourse.*** Notwithstanding any other provision of this Agreement, either Party may, without prejudice to any negotiation or mediation, proceed in the courts of the State of Washington to obtain provisional judicial relief if, in such Party’s sole discretion, such action is necessary to protect public safety, avoid imminent irreparable harm, or to preserve the status quo pending the conclusion of any dispute resolution procedures employed by the Parties or pendency of any action at law or in equity. Except for temporary injunctive relief under this section, neither Party shall bring any action at law or in equity to enforce, interpret, or

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remedy any breach or default of this Agreement without first complying with the provisions of this Article.

Section 16.05. ***Commitments.*** Unless otherwise agreed to in writing (including any express provision of this Agreement) or prohibited by applicable Law, the Parties shall continue to honor all commitments under this Agreement during the course of any dispute resolution under this Article and during the pendency of any action at law or in equity.

Section 16.06. ***Inapplicability.*** Notwithstanding anything to the contrary herein, the provisions of Sections 16.01 and 16.02 shall not be applicable to the District's right to terminate one or more transactions between the Parties, including this Agreement, Slice Contracts and WSPP Transactions, in accordance with Section 15.02(A) of this Agreement, upon the occurrence of one or more of those Events of Default enumerated in Section 15.01(D) of this Agreement.

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**ARTICLE XVII
NO DEDICATION OF FACILITIES**

Section 17.01. ***No Dedication of Facilities.*** No undertaking under any provision of this Agreement shall constitute a dedication of any portion of the electric system of either Party to the public or to the other Party.

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**ARTICLE XVIII
LICENSES AND OWNERSHIP AND CONTROL**

Section 18.01. ***FERC Licenses and Bond Resolutions.*** Purchaser hereby acknowledges and agrees that the District must comply with the terms and provisions of the (i) FERC licenses for the respective Projects and (ii) the respective Debt Obligations and the resolutions and documents authorizing or providing for the issuance or incurrence and/or the terms thereof. This Agreement is made subject to the terms and provisions of such FERC licenses and such licenses shall govern to the extent of any conflict with the terms and provisions of this Agreement.

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**ARTICLE XIX
INFORMATION AND CONFIDENTIALITY**

Section 19.01. ***Confidential Information; Disclosure.*** Where a Party makes any calculation of costs or damages under this Agreement, such Party shall provide, upon the reasonable request of the other Party, documentation supporting such calculation. Neither Party shall disclose or otherwise make available to any other Person or third party any information of a technical, commercial or business nature regarding the Chelan Power System or this Agreement that has been marked or identified (as of the time of such disclosure or availability) as confidential or proprietary (“Confidential Information”) by the Party making such disclosure (the “Disclosing Party”) without the prior written consent of the Disclosing Party, except that:

(A) either Party or its Affiliate may provide Confidential Information to such Party’s or such Affiliate’s existing or prospective lenders, underwriters, investors, affiliates, advisors, employees, officers and directors to the extent reasonably required in connection with the administration of this Agreement, the issuance or incurrence of debt or equity or other financing activities of such Party or such Affiliate, or the performance of any duties relating to this Agreement;

(B) either Party may provide Confidential Information to any Government Authority in connection with the exercise by such Government Authority of its jurisdiction with respect to such Party;

(C) any Party may disclose any such Confidential Information in any litigation or proceeding to enforce or recover damages under this Agreement;

(D) any Party (or its Affiliate) may disclose any such Confidential Information as may be required

(i) by any applicable Law, regulation or governmental order, or

(ii) in connection with any regulatory or governmental proceeding or inquiry, or

(iii) in connection with any reporting requirements under agreements to which both the District and the Purchaser are parties; and

(E) any Party (or its Affiliate) may disclose such Confidential Information to any Person or entity succeeding to all or substantially all the assets of such Party (or its Affiliate) or all or a substantial portion of its interest in the Chelan Power System; provided, that in the case of this Clause (E), any such successor shall agree to be bound by the provisions of this Section 19.01. Confidential Information shall not include information that:

(i) the receiving Party can demonstrate was known to it prior to its disclosure by the other Party;

(ii) is, or later becomes, public knowledge without breach of this Agreement by the receiving Party;

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(iii) was received by the receiving Party from a third party without obligation of confidentiality; or

(iv) is developed by the receiving Party independently from Confidential Information received from the other Party, as evidenced by appropriate documentation. In the event that disclosure is required by a valid order of a court or Government Authority, the Party subject to such requirement may disclose Confidential Information to the extent so required, but shall promptly notify the other Party and shall cooperate with the other Party's efforts to obtain protective orders or similar restraints with respect to such disclosure. The provisions of this Article XIX shall continue in effect until three (3) years after the end of the Term.

Because of the unique nature of the information to be provided, the Parties understand and agree that irreparable harm will be suffered in the event that one Party (the "Breaching Party") fails to comply with its obligations contained in this Section 19.01 and that monetary damages will be inadequate to compensate for such breach. Accordingly, any Breaching Party agrees that the non-breaching party will, in addition to any other remedies available to it under this Agreement, be entitled to specific performance or injunctive relief to enforce the provisions of this Section.

Section 19.02. **Public Record.** Notwithstanding Section 19.01, Purchaser acknowledges that the District is subject to the provisions of RCW 42.56 and that this Agreement and all materials made available under or as a consequence of it (collectively for this Article called the "Materials"), shall be public records as defined in RCW 42.56. Any specific part of the Materials that is claimed by Purchaser to be Confidential Information or proprietary information must be clearly identified as such by Purchaser as set forth in Section 19.03.

Section 19.03. **Purchaser Identification of Confidential Information.**

(A) If Purchaser considers any portion of the Materials to be protected from disclosure under the law, Purchaser must clearly mark on each page and/or individual piece (collectively referred to in this Section 19.03 as "Record") (as opposed to marking only the first page or a cover page to a Record) on the bottom or top of each Record in a manner which makes the words immediately obvious and identifiable, the following words, all capitalized: "PROPRIETARY AND CONFIDENTIAL". A Purchaser which does not do this agrees, for itself and any Affiliate, partner, or other Person or entity, whose Material is used in connection with or incorporated into the Agreement, that each Record, which is not so marked, may be inspected and copied by the public and further that District may disclose the same to the public for such purposes.

(B) If a request is made for inspection and/or copying of the Materials, District will review them to determine which Records contained therein are marked "PROPRIETARY AND CONFIDENTIAL." Records which are not so marked may, in the District's sole discretion, be disclosed by District to the public for inspection and copying. For each Record appropriately marked as "PROPRIETARY AND CONFIDENTIAL", District will determine whether, in its opinion, the Record is exempt from inspection and/or copying under Washington law. If in its discretion District determines that the Record is not exempt from disclosure to the public, District will notify Purchaser of the request and the District's decision that the Record should be disclosed. District will allow Purchaser ten (10) Days to file suit and obtain a court order to restrain disclosure

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by the District. If Purchaser fails or neglects to take such action within said time, District will release all Records, which it has deemed it must disclose. So long as District follows the procedures in this Section, Purchaser agrees and warrants that neither it, nor any Affiliate, partner, or other Person or entity, providing it with Material for inclusion in the Agreement, will have any claim whatsoever against District arising out of either disclosure or any action taken by District under this Section 19.03.

(C) Purchaser further releases District from any liability to Purchaser arising out of any such disclosure or action and agrees to indemnify and hold District harmless from any claim whatsoever, including attorneys' fees, made by any Affiliate, partner, or other Person or entity arising out of disclosure.

(D) For purposes of this Section, the word Purchaser means any Person or entity submitting the Agreement and all Affiliate, partners, persons or entities which have allowed their Materials to be used by Purchaser for purposes of making or performing under the Agreement; provided, for purposes of notice by District to a Purchaser of a request for public records and the right to restrain disclosure as set out above, notice need only be given to the Person or entity actually signing the Agreement, notwithstanding that others may have allowed Purchaser to use their materials for, or as a result of, the Agreement.

(E) Purchaser will have the sole obligation, if any, to notify Affiliates, partners, or other persons or entities, regarding the public document disclosure issues set out in this Section 19.03.

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**ARTICLE XX
FINANCIAL INFORMATION AND [REDACTED]**

Section 20.01. ***Financial Information.*** The Purchaser shall deliver to the District (i) within 120 days following the end of each fiscal year of Purchaser, a link to the Purchaser’s annual report containing audited consolidated financial statements for such fiscal year, (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a link to the Purchaser’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter, (iii) all public announcements made by the Purchaser of a financial nature promptly following their release to the public, unless they are already publicly available and (iv) any notice of any Downgrade Event or any Rating change (including a change in rating outlook), within 10 days upon the occurrence thereof. In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or in the delivery of audited financial statements or certificates with respect thereto, such delay shall not be an Event of Default so long as the Purchaser provides notice to the District and diligently pursues the preparation and delivery of the statements and required certificates.

Section 20.02. [REDACTED]
[REDACTED]
[REDACTED]

Section 20.03. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Section 20.04. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA**ARTICLE XXI
LIMITATION OF LIABILITY**

Section 21.01. **Limitation of Liability.** Except as provided in Article XV, and then only to the extent provided therein, neither Party (including each Party's officers, trustees, directors, agents, employees, direct and indirect parents, subsidiaries or Affiliates, and such parents', subsidiaries' or Affiliates' officers, trustees, directors, agents or employees) shall be liable or responsible to the other Party (or its direct and indirect parents, subsidiaries, Affiliates, officers, trustees, directors, agents, employees, successors or assigns) or their respective insurers, for special, incidental, indirect, exemplary, punitive or consequential damages connected with or resulting from the performance or non-performance of this Agreement, or anything done in connection therewith including, without limitation, Claims in the nature of business interruption, lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), or loss of business, reputation or opportunity, or cost of capital, and irrespective of whether such Claims are based upon downtime costs or Claims of customers, and irrespective of whether such Claims are based upon breach of warranty, tort (including negligence, whether of either District, Purchaser or others), strict liability, contract, operation of law or otherwise, but excluding acts or omissions of gross negligence or willful misconduct.

Section 21.02. **Survival.** The protections afforded by Section 21.01 above shall survive the termination, expiration or cancellation of this Agreement, and shall apply to the fullest extent permitted by law.

Section 21.03. **No Personal Liability.** Neither any partner, shareholder, member, parent company or other Affiliate of either Party (or any officer or director or any employee thereof), nor any partner, shareholder, member, parent company or other Affiliate or successor-in-interest of such partner, shareholder, member, parent company or other Affiliate (or any officer or director of any employee thereof), shall have any personal liability or responsibility for, relating to or in connection with said Party's failure to properly perform any term, covenant, condition or provision of this Agreement.

Section 21.04. **Duty to Mitigate.** 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 non-performance of this Agreement.

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NOTICES**

Section 22.01. **Notification.** All notices to be given pursuant to this Agreement by Purchaser to the District shall be in writing and addressed to the General Manager of Public Utility District No. 1 of Chelan County, 327 N. Wenatchee Avenue, Wenatchee, WA 98801, with a copy to General Counsel of Public District No. 1 of Chelan County, 327 N. Wenatchee Avenue, Wenatchee, WA 98801, slicecontract@chelanpud.org. Notices to be given to Purchaser hereunder shall be in writing and addressed to the Vice President of Energy Supply, Puget Sound Energy, P.O. Box 97034, Bellevue WA 98009-9734, with a copy to the General Counsel of Puget Sound Energy, P.O. Box 97034, Bellevue WA 98009-9734. Notice shall be deemed to have been given when enclosed in a properly sealed envelope, addressed as aforesaid, and deposited first class postage prepaid in a post office or branch post office of the United States Postal Service or by electronic mail, facsimile or other documentary form mutually agreed upon means of communication. Notice by electronic mail, facsimile or hand delivery shall be deemed to have been received by the close of business on the Business Day on which it was delivered or transmitted (provided a confirmation of such transmission has been received). Notice by overnight courier shall be deemed to have been received one Business Day after it was sent. Either Party may change the identity of the contact person or the address for notice for such Party by providing notice thereof to the other Party pursuant to this Section 22.01.

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MISCELLANEOUS**

Section 23.01. **Binding Effect.** This Agreement shall be binding upon the Parties and their successors and permitted assigns.

Section 23.02. **Applicable Law; Venue.** The Parties hereto agree that the laws of the State of Washington shall govern this Agreement. Venue for any legal action arising from this Agreement shall be in the Superior Court of Washington for Chelan County.

Section 23.03. **Entire Agreement; Modifications.** Except as may be expressly provided herein, all previous communications between the Parties hereto, either verbal or written, with reference to the subject matter of this Agreement are hereby abrogated. No modifications or amendments to this Agreement shall be binding upon the Parties or either of them unless such a modification shall be in writing, hereafter duly executed by an authorized officer or employee of each Party.

Neither Party nor any Affiliate thereof may make application to FERC, or any other Government Authority having jurisdiction over this Agreement, seeking any change in this Agreement pursuant to the provisions of Sections 205 or 206 of the Federal Power Act or under any other statute, regulation or other provision promulgated by a Government Authority, nor support any such application by a third party. Absent the agreement of the Parties to any proposed change, the standard of review for changes to any Section of this Agreement specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein whether proposed by a Party, a non-Party or FERC actions 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) (the “Mobile-Sierra” doctrine). The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.

Section 23.04. **Headings.** Section and subsection headings are included solely for the convenience of the Parties and do not constitute a part of this Agreement. No meaning shall be imputed to such headings nor shall they be relied upon to interpret this Agreement.

Section 23.05. **Third-Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement.

Section 23.06. **Non-waiver.** Failure by either Party at any time to require performance of any provision of this Agreement shall not adversely affect either Party’s rights hereunder to enforce the same. No waiver by either Party of any breach of this Agreement shall be held to be a waiver of any subsequent or different breach hereof.

Section 23.07. **Attorney Fees.** The substantially prevailing Party in a dispute related to this Agreement shall be entitled to recover all of its costs, including reasonable attorney fees.

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Section 23.08. **Execution.** This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 23.09. **Severability.** If any term or provision of this Agreement or the application thereof to any Party, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to the Parties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any clause or provision of this Agreement shall be deemed invalid or unenforceable, the Parties will promptly engage in good faith negotiations to modify such clause or provision to each Party's Commercially Reasonable satisfaction to alleviate the grounds for invalidity or enforceability and to preserve the respective rights and obligations of the Parties intended to be conferred by this Agreement to the greatest extent reasonably practicable.

Section 23.10. **No Guaranty; Obligations Regarding Bonds or Indebtedness.** Nothing contained herein shall obligate the Purchaser, directly or indirectly, to be or become a guarantor or surety of any bonds or indebtedness of the District and the Purchaser shall not directly or contingently be obligated to pay such bonds or indebtedness, nor shall it be liable or responsible for the District's use, deposit, investment or application of any funds payable by the Purchaser hereunder. The District may pledge payments to be made by the Purchaser hereunder as security for any such bonds or indebtedness; however, such pledge shall not imply any obligation of the Purchaser beyond the express terms of this Agreement.

Section 23.11. **Metering.**

(A) **Metering Installation.** The District has installed metering devices at each generator and the Transmission Points of Delivery to record the energy, real and reactive power, and instantaneous flow of power generated by the Units and transmitted at the Transmission Points of Delivery. The District may from time to time install additional or replacement metering devices to measure energy, real and reactive power and instantaneous flows from the Units. All such metering devices, as so designated by the District from time to time ("Meters"), shall be used to measure Energy for all purposes of this Power Sales Agreement and for purposes of any other agreement between the Parties related to the delivery of Energy from the Chelan Power System.

(B) **Measurements.** Except as may otherwise be provided in a contract between the Parties governing a specific transaction between them, all power flow and reactive power flow measurements from the Units shall be based on the measurement automatically recorded by the Meters. Measurements shall be adjusted for transmission and transformation losses as may be specified in Section 9.08.

(C) **Meter Testing.** The District shall inspect, test and adjust the Meters at least once every four years. The District shall provide Purchaser with reasonable advance notice of, and permit a representative of Purchaser to witness and verify, such inspections, tests and adjustments.

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(D) Supplemental Testing Requested by Purchaser. In addition to the other inspections and tests required under Section 23.11(C), upon two (2) weeks' prior written notice by Purchaser, and not more often than once every three (3) months, the District shall perform additional inspections or tests of any of the District's Meters. The District and Purchaser shall agree on a mutually convenient time for such inspections or tests, and the District shall permit a qualified representative of Purchaser to inspect or witness such testing of any of the District's Meters. The actual expense of any such requested additional inspection or testing shall be borne by Purchaser unless, upon such inspection or testing, the District's metering devices are found to register inaccurately by more than +/- 0.5%, in which event the expense of the requested additional inspection or testing shall be included in Net Costs.

(E) Recalculations. If any of the District's metering devices are found to be defective or inaccurate by more than +/- 0.2%, it shall be adjusted, repaired, replaced and/or re-calibrated to bring the metering device to within the specifications provided for herein. If any of the District's metering devices are not found to be defective or inaccurate by more than the variances stated herein, then such Meters shall not be re-calibrated unless the Parties otherwise agree.

(F) Adjustment for Inaccurate Metering. If any Meter fails to register, or if the measurement made by such Meter during a test conducted pursuant to Section 23.11(C) or (D) varies by more than +/- 0.2% from the measurement made by the standard meter used in such test, or if an error in meter reading occurs, adjustment shall be made to correct all measurements for the period during which such inaccurate measurements were made, if such period can be determined. If such period cannot be determined, the adjustment shall be made for the period immediately preceding the test of such Meter which is equal to the lesser of (a) one-half the time from the date of the last preceding test of such Meter, or (b) six months. Such corrected measurements shall be used to recompute the amounts of Energy delivered by the District to Purchaser during the period of adjustment. Such adjustment shall not include or give rise to any monetary compensation or other adjustments to the Periodic Payments.

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The Parties have executed this Agreement on the dates noted below.

“District”

“Purchaser”

**Public Utility District No. 1
of Chelan County, Washington**

Puget Sound Energy, Inc.

By: *Kirk Hudson*
Kirk Hudson
General Manager

By: *Ron Roberts*
Ron Roberts
Vice President, Energy Supply

Date: February 7, 2023


Date: February 7, 2023

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ATTACHMENT 1 from 7.01

CPI for All Urban Consumers (CPI-U)**Series Id:** CUUR0000SA0

Not Seasonally Adjusted

Series Title: All items in U.S. city average, all urban consumers, not seasonally adjusted**Area:** U.S. city average**Item:** All items**Base Period:** 1982-84=100**Download:**  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	HALF1	HALF2
2012	226.665	227.663	229.392	230.085	229.815	229.478	229.104	230.379	231.407	231.317	230.221	229.601	228.850	230.338
2013	230.280	232.166	232.773	232.531	232.945	233.504	233.596	233.877	234.149	233.546	233.069	233.049	232.366	233.548
2014	233.916	234.781	236.293	237.072	237.900	238.343	238.250	237.852	238.031	237.433	236.151	234.812	236.384	237.088
2015	233.707	234.722	236.119	236.599	237.805	238.638	238.654	238.316	237.945	237.838	237.336	236.525	236.265	237.769
2016	236.916	237.111	238.132	239.261	240.229	241.018	240.628	240.849	241.428	241.729	241.353	241.432	238.778	241.237
2017	242.839	243.603	243.801	244.524	244.733	244.955	244.786	245.519	246.819	246.663	246.669	246.524	244.076	246.163
2018	247.867	248.991	249.554	250.546	251.588	251.989	252.006	252.146	252.439	252.885	252.038	251.233	250.089	252.125
2019	251.712	252.776	254.202	255.548	256.092	256.143	256.571	256.558	256.759	257.346	257.208	256.974	254.412	256.903
2020	257.971	258.678	258.115	256.389	256.394	257.797	259.101	259.918	260.280	260.388	260.229	260.474	257.557	260.065
2021	261.582	263.014	264.877	267.054	269.195	271.696	273.003	273.567	274.310	276.589	277.948	278.802	266.236	275.703
2022	281.148	283.716	287.504	289.109	292.296	296.311	296.276	296.171	296.808	298.012	297.711	296.797	288.347	296.963

Source: U.S. Department of Labor, Bureau of Labor Statistics

<http://data.bls.gov/cgi-bin/surveymost?bls>

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA**APPENDIX A****DETERMINATION OF CHELAN POWER SYSTEM NET COSTS**

1. Definitions. The following definitions shall apply throughout the Agreement and this Appendix A whenever the term is capitalized.

“*Assumed Debt Service*” means, with respect to any Debt Obligation issued after the Signing Date, the amount for each applicable Contract Year calculated as of the issuance or incurrence thereof, that would be sufficient to fully amortize the original stated principal amount thereof, together with interest thereon at the Index Rate (using semi-annual compounding and a year of 360 days) for such Debt Obligation on an annual level debt service basis over an amortization period commencing on the date of issuance or incurrence of such Debt Obligation and ending on the Deemed Maturity thereof.

“*Average Service Life*” means, with respect to any Debt Obligation issued after the Signing Date, the estimated weighted average economic service life of the Capital Improvements that the District expects to finance from proceeds of such Debt Obligations issued or incurred after the Signing Date, as determined by the District on or as of the date of the issuance or incurrence thereof. For purposes of the foregoing, land shall be deemed to have a weighted average economic service life of 25 years.

“*Debt Obligation*” means a bond, note (including a commercial paper note or bond anticipation note), installment purchase agreement, financing lease, inter-fund loan or any other obligation for borrowed money, or portion thereof, issued or incurred by or on behalf of the District for either or both Projects, the proceeds of which were or will be applied to finance Capital Improvements with respect to such Project or Projects and which has been or is designated by the District in its discretion as a Debt Obligation with respect to such Project or Projects. For the avoidance of doubt, the obligations listed or referred to in Schedule A-1 shall constitute Debt Obligations for purposes of this Agreement. Debt Obligations shall not include any Refunding Obligations, or the principal portion of any obligations issued after the Signing Date that otherwise would fall within the definition of Debt Obligations, to the extent such principal portion is or was used to pay costs of issuance or to fund debt service reserves with respect to Debt Obligations, all as determined by the District in its discretion. To avoid double counting, if the District designates inter-fund loans from the District Enterprise Units of the District to the Chelan Power System as Debt Obligations, the corresponding third-party obligations of the District shall not be included as Debt Obligations for purposes of this Agreement. For purposes of this Appendix A, “Debt Obligations” will include inter-fund loans from the District Enterprise Units that otherwise qualify as Debt Obligations; however, transfers from the District to the Chelan Power System derived from payments made by the Purchaser in respect of Capital Recovery Charges or Debt Reduction Charges, as determined by the District, shall not be treated as Debt Obligations for purposes of this Agreement. For purposes of this Agreement, the principal amount of Debt Obligations issued after the Signing Date shall be deemed to amortize in accordance with the Assumed Debt Service with respect thereto, and not on the actual principal amount of the District’s Debt Obligations that may be outstanding on the date of calculation.

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“*Deemed Maturity*” means that date determined by the District as of the issuance or incurrence of a Debt Obligation, by adding to the date of issuance or incurrence of such Debt Obligation, *the lesser of* (a) twenty-five (25) years, or (b) the Average Service Life of the Capital Improvements expected to be financed by the District from the proceeds thereof, as determined by the District.

“*Independent Investment Banker*” means an investment banking firm selected by the District in its discretion that is nationally recognized for its knowledge and experience in the pricing and sale of debt securities and that has, or whose parent company has, a rating from at least two of the Rating Agencies of not less than “A-” in the case of S&P and Fitch, and “A3” in the case of Moody’s.

“*Index Rate*” means, with respect to each Debt Obligation, as of the applicable date of calculation, the fixed interest rate, as determined by the District in consultation with an Independent Investment Banker as of the date of issuance or incurrence thereof, equal to 110% of the weighted average annual interest rate that such Debt Obligation would bear (i) based on the then current underlying long term credit rating of the District; (ii) assuming that interest on such Debt Obligation would be includable in the income of the holders thereof for federal income tax purposes; and (iii) assuming that such Debt Obligation were amortized on a level debt service basis over the applicable amortization period described in the definition of “Assumed Debt Service.” In determining the Index Rate of any Debt Obligation, the District may consider interest indices and other market data generally available as of the date of calculation.

“*In Service Date*” means the estimated weighted average date the Capital Improvements expected to be financed from proceeds of a Debt Obligation are or are expected to be placed in service, as determined by the District.

2. Determination of Net Costs. For purposes of this Agreement, the District’s Chelan Power System net costs (“Net Costs”) for any given month shall include all costs and expenses of every kind and description, both direct and indirect, paid or accrued by the District in such Month with respect to its ownership, operation, maintenance, repair and improvement of, and the production, sale and delivery of Output from, the Chelan Power System, as determined by the District, including without duplication, the items of cost and expense described below in this Section 2, plus any cost or expenses incurred by the District in such month in administering this Agreement that are unique to Purchaser or Purchaser’s performance (or failure to perform) hereunder. Net Costs shall not include any depreciation expense. Such Net Costs shall include, without intending to limit the generality of the foregoing:

- (a) **Operating and Maintenance Costs.** All operating and maintenance costs of every kind and description, both direct and indirect (“Operating Costs”), paid or accrued by the District with respect to the operation, maintenance and repair of, or the production, sale or delivery of Output from, the Chelan Power System or any part thereof, including allocable District overhead and administrative costs, and costs of generation integration for the Chelan Power System provided by the District’s distribution system, all as the District may reasonably determine consistent with GAAP, FERC

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regulations (including FERC's Uniform System of Accounts) and the District's accounting policies, practices and procedures. Without limiting the generality of the foregoing, Operating Costs shall include those items of cost described in subsections (i) through (iv) below.

- (i) **Taxes and Assessments.** All governmental taxes, assessments or other similar charges with respect to its ownership, operation, maintenance or repair of, or the production, sale or delivery of Output from, the Chelan Power System or any part thereof, including payments by the District in lieu of such governmental taxes, assessments or other similar charges.
- (ii) **Certification, Relicensing and Decommissioning Costs.** All costs determined by the District to be reasonably allocable to the certification, re-licensing or decommissioning of any of the Projects or any part thereof. The District agrees that it will not accelerate payment of costs associated with measures required or agreed upon, in the District's sole discretion, for the relicensing of either Project outside timelines contemplated in FERC and other regulatory requirements or settlement agreements related to relicensing.
- (iii) **Litigation.** All judgments, claims, settlements, arbitration awards and other similar costs and liabilities with respect to its ownership, operation, maintenance, repair or improvement of, or the production, sale or delivery of Output from, the Chelan Power System, including attorneys' fees and costs, in each case to the extent not paid from proceeds of insurance.
- (iv) **Loss Prevention.** All costs for the prevention of any loss or damage to the Chelan Power System, and all costs of the correction of any loss or damage to the Chelan Power System to the extent not paid from proceeds of insurance covering such loss or damage.

Anything in this Appendix A to the contrary notwithstanding, Operating Costs shall not include costs paid or deemed paid from the proceeds of Debt Obligations or to the extent the costs of Capital Improvements were paid from Capital Recovery Charges or Debt Reduction Charges as contemplated in Sections 7.01 (F) and (G).

The Purchaser agrees that the District may, in its sole discretion, determine what Operating Costs shall be incurred in connection with the ownership, operation, maintenance and improvement of, and the production, sale and delivery of Output from, the Chelan Power System.

- (b) **Financing Costs.** Financing Costs ("Financing Costs") for each Month shall consist of the monthly accrual, as determined by the District, of the

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following costs payable or deemed payable by the District or the Chelan Power System, as the case may be, in connection with the issuance, incurring and carrying of Debt Obligations:

- (i) **Outstanding Debt Obligations.** With respect to Debt Obligations that are outstanding as of the Signing Date (“Outstanding Debt Obligations”), the Purchaser will pay Financing Costs based on the payment and amortization schedule attached hereto as Schedule A-1, and regardless of actual payments owed by the District and regardless of any subsequent changes in such Debt Obligations, whether as a result of prepayments, refundings, restructuring or otherwise.
- (ii) **Future Debt Obligations.** With respect to Debt Obligations that are incurred after the Signing Date (“Future Debt Obligations”), the Purchaser will pay the monthly amortization of the Assumed Debt Service on such Debt Obligations attributable to the Chelan Power System. Following the issuance or incurrence of any Debt Obligation, the District will make available to the Purchaser, at its request, a written schedule showing the Capital Improvements expected to be financed by the District from the proceeds thereof, the estimated Average Service Life of such Capital Improvements as determined by the District and the scheduled monthly Financing Costs associated with such Debt Obligations.
- (iii) **Refunding Obligations.** The Purchaser’s Financing Costs with respect to Debt Obligations shall be determined as specified in Schedule A-1 and any Future Debt Obligations and will not be affected by any subsequent direct or synthetic refinancing of such obligations.

Except as provided in Section 2(c) below, no adjustment will be made to the Purchaser’s scheduled Debt Obligations payments as calculated in accordance with this Section as a result of the payment, purchase, defeasance, tender, acceleration, redemption or other restructure or modification of Debt Obligations after the initial issuance or incurrence thereof.

- (c) **Capital Recovery Charge and Debt Reduction Charge Adjustments.** If the District purchases, redeems or defeases outstanding debt of the Chelan Power System from moneys on deposit in the Capital Recovery Charge Fund or Debt Reduction Charge Fund, or from proceeds of insurance received with respect to components of the Capital Improvements that the District elects not to repair, rebuild or replace, all as determined by the District, the District shall provide the Purchaser with a credit against its monthly Financing Costs otherwise due from time to time hereunder, spread over a 25 year period from the month following the month of calculation

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(which the District agrees to complete as soon as reasonably practical following such purchase, redemption or defeasance), computed on a level monthly credit basis, using the following criteria, all as determined by the District: (i) the interest component of the credit shall be the actual weighted average interest rate applicable to Debt Obligations included in the Purchaser's Financing Costs (as set forth in Schedule A-1 and Future Debt Obligations as determined in accordance with Section 2(b)(ii)), and (ii) the principal component of the credit shall equal the principal amount of debt of the Chelan Power System that was purchased, redeemed or defeased with such funds.

Anything in this Appendix A to the contrary notwithstanding, the District's determination of Net Costs, Operating Costs and Financing Costs shall be binding and conclusive on the Purchaser absent manifest error.

Notwithstanding the foregoing, the District, in its discretion, may adjust the Financing Costs contemplated in this Section 2 as it deems necessary, from time to time, to correct any error in the computation thereof, or to reflect a material change in the District's reasonable estimate of the In Service Date or the Average Service Life with respect thereto, and shall either add to or credit the amounts otherwise due in such month under this Section 2, to reflect the cumulative effect of any such adjustment.

Anything in this Appendix A to the contrary notwithstanding, except as provided in Section 15.02 of this Agreement, no credits shall be given for any income or revenues from the sale or other disposition of Output to any Person.

3. Use of Funds; Separate Accounts.

- (a) Except as otherwise expressly set forth in this Agreement, the District, in its sole discretion, may use payments received from the Purchaser under this Agreement in any manner that the District shall determine.
- (b) The moneys in any fund or account established pursuant to this Agreement may be deposited and invested on a commingled basis by the District; provided, that the District shall maintain adequate accounting records to reflect any restricted applications of the moneys on deposit therein.
- (c) The designation of any fund or account herein shall not be construed to require the establishment of any independent, self-balancing fund as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain funds for certain purposes and to establish certain priorities or requirements for application thereof as provided herein.

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4. Issuance and Incurrence of Debt Obligations and Refunding Obligations.

The District in its discretion may issue and incur Debt Obligations for the purpose of financing Capital Improvements to the Chelan Power System and may issue or incur Refunding Obligations to Refinance Debt Obligations and Refunding Obligations.

Anything in this Agreement to the contrary notwithstanding, the covenants, agreements, terms and provisions of all Debt Obligations and Refunding Obligations, including all bond resolutions, loan resolutions, trust agreements and indentures, loan agreements, reimbursement agreements, leases, bonds, notes and other similar instruments, adopted or executed by the District with respect to such Debt Obligations and Refunding Obligations shall be determined by the District in its sole discretion.

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA**SCHEDULE A-1****SCHEDULE OF FINANCING COSTS WITH RESPECT TO DEBT
OBLIGATIONS OUTSTANDING AS OF THE SIGNING DATE ⁽¹⁾**

Period <u>Beginning</u>	Total		Total		Total Debt	
	<u>Principal</u>	<u>Interest</u>	<u>Principal & Interest</u>	<u>Reserve & Contingency</u>	<u>Service</u> <u>Obligation</u>	
2021	\$ 33,523,316.52	\$ 31,579,031.06	\$ 65,102,347.58	\$ 2,268,500.00	\$ 67,370,847.58	\$ 488,599,798.01
2022	35,932,116.14	30,317,847.32	66,249,963.46	2,268,500.00	68,518,463.46	544,931,163.14
2023	37,995,767.39	28,179,066.37	66,174,833.76	2,268,500.00	68,443,333.76	508,999,047.00
2024	39,708,929.02	25,934,128.38	65,643,057.40	2,268,500.00	67,911,557.40	471,003,279.61
2025	39,484,985.83	23,563,553.68	63,048,539.51	2,268,500.00	65,317,039.51	431,294,350.59
2026	40,200,842.34	21,203,076.09	61,403,918.43	2,268,500.00	63,672,418.43	391,809,364.76
2027	41,706,010.04	18,813,814.58	60,519,824.62	2,268,500.00	62,788,324.62	351,608,522.42
2028	43,364,873.87	16,352,935.50	59,717,809.37	2,448,739.56	62,166,548.93	309,902,512.38
2029	30,303,285.71	13,127,832.72	43,431,118.43	1,073,950.88	44,505,069.31	266,537,638.51
2030	19,924,499.29	10,857,595.40	30,782,094.69	-	30,782,094.69	217,414,173.80
2031	18,882,815.40	9,742,649.33	28,625,464.73	-	28,625,464.73	197,489,674.51
2032	17,531,129.32	8,680,019.99	26,211,149.31	-	26,211,149.31	178,606,859.11
2033	17,886,860.69	7,690,309.91	25,577,170.60	-	25,577,170.60	161,075,729.79
2034	17,407,087.71	6,685,400.55	24,092,488.26	-	24,092,488.26	143,188,869.10
2035	15,709,709.46	5,724,319.02	21,434,028.48	-	21,434,028.48	125,781,781.39
2036	15,142,279.84	4,882,096.20	20,024,376.04	-	20,024,376.04	110,072,071.93
2037	14,565,503.97	4,095,784.19	18,661,288.16	-	18,661,288.16	94,929,792.09
2038	14,494,325.77	3,351,567.59	17,845,893.36	-	17,845,893.36	80,364,288.12
2039	11,676,970.72	2,628,896.06	14,305,866.78	-	14,305,866.78	65,869,962.35
2040	10,009,792.79	2,091,584.52	12,101,377.31	-	12,101,377.31	54,192,991.63
2041	10,311,791.18	1,685,289.24	11,997,080.42	-	11,997,080.42	44,183,198.84
2042	10,448,731.59	1,269,352.61	11,718,084.20	-	11,718,084.20	33,871,407.66
2043	10,592,147.39	854,682.22	11,446,829.61	-	11,446,829.61	23,422,676.07
2044	6,370,176.70	426,211.51	6,796,388.21	-	6,796,388.21	12,830,528.68
2045	5,151,338.79	216,034.14	5,367,372.93	-	5,367,372.93	6,460,351.98
2046	1,309,013.19	32,830.07	1,341,843.26	-	1,341,843.26	1,309,013.19

(1) Includes only Debt Obligations as of the Signing Date and does not include Future Debt Obligations.
(2) As of the beginning of each period.

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APPENDIX B

OUTPUT AND PLANNING

This Appendix B shall govern the determination of the Output to be made available to Purchaser under this Agreement. This Appendix B, in conjunction with Article IX, shall also govern the management, scheduling, delivery and transmission of Purchaser's Percentage of Output.

Definitions

In addition to the terms elsewhere defined in this Agreement, the following terms used in this Appendix B shall have the meanings ascribed to them below.

Biological Opinion - means any opinion issued by a Government Authority authorized to do so under the Endangered Species Act (ESA) that reviews and assesses whether the operating plan submitted by BPA, the U.S. Army Corps of Engineers and the Bureau of Reclamation will jeopardize the survival of any creature or creatures that have been determined to be threatened or endangered pursuant to the ESA.

Black Start Capability – The ability of Black Start Resources, as defined in the NERC Glossary, to self-start without any source of off-site electric power and maintain adequate voltage and frequency while energizing isolated transmission facilities and auxiliary loads of other generators

Bonneville Power Administration (BPA) - The Federal power marketing agency responsible for the selling of the output of all Columbia River Federal project generation, and ownership, operation and maintenance of a major share of the northwest high-voltage transmission system.

Chelan Power System Output includes adjustments for the following:

1. COLA
2. PNCA
3. HCP
4. Biological Opinion
5. Hanford Reach Fall Chinook Protection Program
6. Immediate Spill Replacement

Fish Spill – The required spill of water for the passage of fish past the Projects as required by FERC order, the District's HCP, spill for studies, or other Regulatory Authorities.

Habitat Conservation Plans (HCP) – The plans approved as part of the Rocky Reach and Rock Island licenses to protect anadromous fish passing upstream and downstream at the Projects.

Hanford Reach Fall Chinook Protection Program (Vernita Bar) - The agreement which defines the Mid-Columbia projects' (Grand Coulee, Chief Joseph, Wells, Rocky Reach, Rock Island, Wanapum, and Priest Rapids) operational obligations for the fresh water life cycle protection of the Hanford Reach Fall Chinook which has been signed by the District, National Oceanic and Atmospheric Administration's Department of Fisheries (NOAA Fisheries),

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Washington Department of Fish and Wildlife, PUD No. 2 of Grant County, and PUD No. 1 of Douglas County.

Immediate Spill Replacement – The energy received from the Federal government for the purpose of moving spill from the Federal system to reduce total dissolved gas levels downstream from Federal reservoirs.

Load Following/Regulation - The ability to adjust generation within an hour (or pursuant to dynamic scheduling) to follow variations in load. Load Following/Regulation is limited and constrained by the number of Units available, any limitations on the Units, Ramp Rate, and any other power or non-power restrictions.

Non-Spinning Reserves – has the meaning given in the NERC Glossary.

Operational Constraints – Constraints on the Units, or a Project's operation that are needed to meet any requirement due to the HCP, regulations, Laws, court orders, authority, safety, or to minimize equipment wear, maintain equipment, or repair/replace equipment, or that are due to any other event or circumstance described in Section 1(E) of this Appendix B or in Sections 6.01 or 9.07 of the Agreement.

Pacific Northwest Coordination Agreement (PNCA) – means the Agreement amongst northwest parties executed in 1997 for the coordinated operation of the Columbia River System which became effective August 1, 2003, as such Agreement may be amended or superseded from time to time.

Pond/Storage – The volume of water, expressed in MWh, that can be stored behind a Project between its minimum and maximum headwater elevations.

Project Transmission Facilities – The transmission facilities listed in Appendix C, which are components of the associated Projects, as identified in Appendix C, and are utilized to transmit Capacity and Energy from the Units to the Chelan Transmission System.

Ramp Rate – means the rate of change in the level of generation for a specified period within all applicable Operational Constraints. The maximum Ramp Rate is a variable quantity based upon these limitations.

Regional Transmission Organization (RTO) – shall mean any regional transmission organization which governs loads, generation, ancillary services and transmission of both Parties. As of the Signing Date, there is no such RTO.

Reliability Standards – has the meaning given in the NERC Glossary.

Remedial Action Scheme (RAS) – has the meaning given in the NERC Glossary.

Spinning Reserve – has the meaning given in the NERC Glossary.

Spill – Water that passes over a spillway without going through turbines to produce energy.

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

Spill Past Unloaded Units – Spill that occurs while Units are not all fully loaded.

Unit – Each generating unit or collectively, the generating units at the Projects. The Units currently consist of the eleven generating Units C1 through C11 at Rocky Reach, the eleven generating Units BH (house Unit) and B1 through B10 at Rock Island Powerhouse One, and the eight generating Units U1 through U8 at Rock Island powerhouse Two. Unit may also include any other generating Units installed in the Chelan Power System (for example attraction water turbines).

Voltage Support / MegaVars (MVARs) – Shall mean reactive power supplied or absorbed by the Chelan Power System as required to maintain voltage at adjacent switchyards. Under certain operating conditions, the MVARs output from the Units may cause a reduction in the Capacity of the Chelan Power System.

OUTPUT

Section 1. Chelan Power System Output.

(A) **Capacity and Energy Component.** Output includes the deliverable electric Capacity and Energy from the Chelan Power System net of the following adjustments with respect thereto:

(i) adjustments for receipt and delivery of all upstream and downstream encroachments, adjustment for station service and losses to the Transmission Point(s) of Delivery;

(ii) adjustment for energy delivery or consumption obligations that are a Project responsibility under applicable Laws or agreements (including, but not limited to, fish hatcheries);

(iii) adjustment for capacity and energy receipt obligations with the Federal System associated with Immediate Spill Replacement;

(iv) capacity and energy delivery obligations under the Canadian Entitlement Allocation Extension Agreement signed by the District and the Bonneville Power Administration, acting as the U.S. Entity under the U.S. Canada Treaty of 1964;

(v) Purchaser adjustments for energy delivery rights that are a Project right under applicable laws or agreements (including, but not limited to, PNCA); and

(vi) adjustments due to limitations imposed by and rights under the FERC licenses, COLA, HCP, Biological Opinion, Hanford Reach Fall Chinook Protection Program and Immediate Spill Replacement.

(B) **Pond/Storage.** Output includes access to and the ability to use the Purchaser's Percentage of Pond/Storage of the Projects of the Chelan Power System.

(C) **Load Following and Regulation.** Output includes Load Following/Regulation services by the Chelan Power System.

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

(D) **Chelan Power System Rights and Obligations.** Output includes the rights and obligations from Canadian Entitlement, COLA, PNCA, HCP, Biological Opinion, Hanford Reach Fall Chinook Protection Program and Immediate Spill Replacement.

(E) **Output Limitations.** Output is subject to limitation or adjustments due to:

- (i) planned or unplanned outages for maintenance or repair;
- (ii) any reductions due to fishery programs, including but not limited to, spill for fish bypass and capability reductions for a bypass system;
- (iii) any reductions or limitations due to the Hanford Reach Fall Chinook Protection Program and the Biological Opinion or any other limitations imposed by Government Authorities;
- (iv) any reductions or limitations due to the HCP;
- (v) reductions or interruptions reasonably necessary to comply with Reliability Standards;
- (vi) minimum generation limitations;
- (vii) other operational limitations lawfully imposed;
- (viii) force majeure events; and
- (ix) Any other Operational Constraints.

(F) **Excluded Products and Services.** Output does not include the following:

- (i) Black Start Capability;
- (ii) RAS;
- (iii) Voltage Support/MegaVars (MVARs); and
- (iv) All other items not specifically included in Clauses (A) through (E) of this Section 1, except as otherwise described in Clause (G) below. It is Purchaser's responsibility to provide any additional ancillary services required to comply with safety and reliability standards in connection with Purchaser's receipt and use of Purchaser's Percentage of Output.

(G) **Spinning Reserves and Non-Spinning Reserves.** The Purchaser's ability to utilize Purchaser's Percentage of Output for purposes of Spinning Reserves and Non-Spinning Reserves shall be limited to and as provided in COLA and its related operating protocols. The District reserves the right to refuse to place unloaded Units on-line for the sole purpose of meeting Purchaser's Spinning Reserve obligations.

(H) **Implementation.** The reduction of Chelan Power System Capacity deliveries to

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Purchaser will be imposed pro-rata such that reductions of Capacity for Purchaser at any time will equal Purchaser's Percentage of the total reductions of Capacity at such time. Energy reductions of the Chelan Power System shall be allocated according to procedures in the COLA. The Purchaser shall have the ability to utilize its full Purchaser's Percentage of Output at any point in time, subject to the availability of Units, the amount of water available, FERC limitations, maximum Ramp Rates, and any other Operational Constraints.

MEASUREMENT OF ENERGY

Section 2. Measurement of Energy Made Available. The amount of electric Energy made available hereunder from time to time shall be deemed to be the amount of Energy delivered in accordance with this Appendix, as measured in accordance with Section 23.11, that was not interrupted or curtailed due to conditions set forth herein or in Section 6.01 of this Agreement.

MANAGEMENT**Section 3. Management**

(A) **Dynamic Transfer.** The Parties shall enter into a dynamic transfer agreement if the Purchaser elects to take delivery of Purchaser's Percentage of Output via a pseudo-tie or a dynamic signal. Purchaser's forecasts provided to the District pursuant to the preceding sentence shall be treated as "Confidential Information" for purposes of Section 19.01 of the Agreement.

(B) **Third Party Scheduling Services.** Purchaser may elect to purchase Scheduling services from the District or a third party for its Energy deliveries. The obligations of the Parties with respect to such Scheduling services shall be separately negotiated and subject to mutually agreeable terms and conditions.

(C) **RTO.** In the event that an RTO is created that purchases Purchaser's Percentage of Output directly from generating projects, then as between the District and the Purchaser, it will be Purchaser's responsibility to manage and bid these products into that entity with respect to Purchaser's Percentage of Output. The District will facilitate delivery of any Output delivered from the Purchaser's Percentage of Output by Scheduling such deliveries with the purchasing party.

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

OPERATING PROCEDURES

Section 4. Modification or Addition of Operating Procedures. The District may establish new or additional operating procedures that the District considers necessary to effectuate this Agreement and to conform to standard operating practices in the region. Changes may also be made to conform to WECC, NERC or other Government Authority's standard operating protocol/practices. Changes for other reasons will be made by mutual agreement.

PLANNING DATA

Section 5. Planning Data. The District shall from time-to-time supply, as soon as practicable after it is available to the District, estimates of planned outages and planned Fish Spill to enable Purchaser to estimate future Output.

OPERATING DATA

Section 6. Operating Data. Purchaser may from time-to-time request that the District provide Purchaser with available operating data related to the Chelan Power System, including planned outages, Fish Spill estimates and other anticipated events or circumstances that might affect Output over the ensuing 12 months. The District shall use Commercially Reasonable Efforts to comply with such requests, to the extent such information is in the District's possession; provided, however, that the District shall not be liable to the Purchaser for any inaccuracies in such information or the failure of the District to deliver it in a timely manner. The Parties anticipate that the technology for the transfer of such information and the information required to operate Purchaser's Percentage of Output will change over time. The Parties agree to transfer operating information reasonably needed by Purchaser to operate Purchaser's Percentage of Output by means of a technology that is both cost-effective and timely, as mutually agreed by the Parties.

COORDINATION AGREEMENT

Section 7. Pacific Northwest Coordination Agreement ("PNCA"). The District is currently a signatory of the PNCA and expects that the PNCA will remain in effect throughout the Term of this Agreement. The District's current FERC licenses also require that the Projects be coordinated with other generating facilities in the Pacific Northwest. It is the intention of both Parties that Purchaser's Percentage of Output remain coordinated under the PNCA. All rights and duties under the PNCA as applicable to Purchaser's Percentage of Output shall be discharged solely by Purchaser, except as otherwise provided in this Section 7. None of the means to implement this coordination, whether through the Purchaser becoming signatory to the PNCA, or by means of the District's current PNCA contract, or other mutually agreeable methods are precluded or specified by this Agreement, and are left for later determination. If Purchaser is not a signatory to the PNCA, it is expected that another mutually acceptable agreement will be reached by the Parties prior to the delivery of any Purchaser's Percentage of Output to Purchaser. In the event that no such agreement is reached, Purchaser commits to becoming a signatory to PNCA and will assume all rights and obligations associated with coordinating its Purchaser's Percentage of Output under PNCA. The headwater benefit obligations defined by the PNCA are also a settlement of FERC Section 10(f) obligations to the upstream Federal projects, as well as non-Federal parties. As such, any costs of such headwater benefits with respect to Rock Island and

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Rocky Reach are considered a Project cost and will be included in Net Costs.

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

APPENDIX C
PROJECT TRANSMISSION FACILITIES

Rocky Reach:

All generator step-up transformers.

All lines from Rocky Reach to the Rocky Reach Switchyard including the 230kV breakers, switches associated with these lines and associated protection and control systems connecting them to the bus.

Rock Island:

All generator step-up transformers.

All lines from Rock Island to the McKenzie Switchyard including the 115kV breakers, switches associated with these lines and associated protection and control systems connecting them to the bus.

The Rock Island Powerhouse Two 115 kV breakers 3-350, 3-360, and 3-370 with their associated switches and protection and control systems.

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA**APPENDIX D****START CYCLE TRACKING METHODOLOGY****DEFINITIONS**

In addition to the terms elsewhere defined in this Agreement, the following terms used in this Appendix D shall have the meanings ascribed to them below.

“Physical Start Cycle” means any physical unit start at either Project.

“Purchaser Allowable Start Cycles” means the number of allowable Purchaser Start Cycles per year.

“Purchaser Start Cycles” means the count of Physical Start Cycles attributed to the Purchaser as determined by the methodology in this Appendix D.

“Virtual to Physical Factor” means the sum of the Physical Start Cycles divided by the sum of the Virtual Start Cycles for all purchasers for a given period.

“Virtual Start Cycle(s)” means the number of 28 MW thresholds crossed by an average 5-minute generation request signal increase.

METHODOLOGY

Virtual Start Cycles will be tracked and counted for all purchasers for a given period. The Virtual to Physical Factor will be determined for that period. The Virtual to Physical Factor will be multiplied by the Purchaser’s Virtual Start Cycles to determine the Purchaser Start Cycles for that period. Purchaser Start Cycles will be compared to the Purchaser Allowable Start Cycles pursuant to Article V, Section 5.02(V).

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA**Example Purchaser Start Cycles calculation for a 5% slice purchaser for Dec 2019 to Nov 2020**

Step 1. Determine the Virtual Start Cycles for all purchasers. Sum the Virtual Start Cycles for all purchasers for each month. See Table 1 below.

Virtual Start Cycles for all purchasers								Sum of Virtual Start Cycles
	Purch 1	Purch 2	Purch 3	5% Purch	Purch 4	Purch 5	Purch 6	
Dec-19	628	239	28	91	145	54	0	1185
Jan-20	671	223	36	250	359	175	0	1714
Feb-20	651	61	37	68	278	109	49	1253
Mar-20	1022	455	41	125	318	315	154	2430
Apr-20	1005	451	44	150	321	279	127	2377
May-20	571	4	37	25	208	53	9	907
Jun-20	400	0	4	33	171	92	6	706
Jul-20	510	5	13	38	219	105	42	932
Aug-20	803	105	35	110	314	210	69	1646
Sep-20	976	599	54	115	271	272	117	2404
Oct-20	934	663	48	158	294	249	127	2473
Nov-20	816	58	79	143	272	161	76	1605
Sum	8987	2863	456	1306	3170	2074	776	19632

Table 1: Virtual Start Cycles for all purchasers for the Dec 2019 to Nov 2020 period

Step 2. Sum the Physical Start Cycles at Rocky Reach and Rock Island for each month. For each month, calculate the Virtual to Physical Factor by dividing the sum of the Physical Start Cycles by the sum of the Virtual Start Cycles for all purchasers from Step 1. For each month, calculate the Purchaser Start Cycles by multiplying the Virtual to Physical Factor and the Purchaser's Virtual Start Cycles from Step 1.

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

	Physical Start Cycles	Physical Start Cycles	Sum of Physical Start Cycles	Virtual to Physical Factor	Purchaser Start Cycles
	RR	RI	RR&RI		5% Purch
Dec-19	71	68	139	12%	10.7
Jan-20	117	63	180	11%	26.3
Feb-20	51	29	80	6%	4.3
Mar-20	279	104	383	16%	19.7
Apr-20	278	125	403	17%	25.4
May-20	21	14	35	4%	1.0
Jun-20	7	14	21	3%	1.0
Jul-20	39	24	63	7%	2.6
Aug-20	90	29	119	7%	8.0
Sep-20	237	166	403	17%	19.3
Oct-20	247	160	407	16%	26.0
Nov-20	77	37	114	7%	10.2
Sum	1514	833	2347		154


Table 2: Physical Start Cycles for Rocky Reach and Rock Island, Virtual to Physical Factors, and monthly and annual Purchaser Start Cycles

For this example, the Purchaser Start Cycles is 154 for this 12-month period and the Purchaser Allowable Start Cycles is 412. This means this 5% purchaser used 37% of the Purchaser Allowable Start Cycles.

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APPENDIX E

FIXED ANNUAL CHARGE

Contract Year	Fixed Annual Charge
2031	
2032	
2033	
2034	
2035	
2036	
2037	
2038	
2039	
2040	
2041	
2042	
2043	
2044	
2045	
2046	
2047	
2048	
2049	
2050	
2051	

Shaded Information is Designated
CONFIDENTIAL per WAC 480-07-160

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**COVER SHEET ELECTIONS
applicable to the
COLLATERAL ANNEX
to the
AGREEMENT(S)**

This Cover Sheet Elections applicable to the Collateral Annex to the Agreement(s) (“Cover Sheet Elections”) between: Public Utility District No. 1 of Chelan County, Washington (“Party A”) and Puget Sound Energy, Inc. (“Party B”) (each a “Party” and, collectively, the “Parties”).

This Cover Sheet Elections shall be effective as of February 7, 2023 (the “Elections Effective Date”) and supersedes the Cover Sheet Elections between the Parties effective March 31, 2021.

This Cover Sheet Elections sets forth the Parties’ agreements to supplement the Collateral Annex and, as the Parties may determine, vary the terms and conditions of the Collateral Annex. To the extent there are any inconsistencies between the terms and conditions of the Collateral Annex, excluding the Cover Sheet Elections, and these Cover Sheet Elections, the Cover Sheet Elections shall prevail.

Terms that are capitalized for reasons other than grammatical reasons shall have the meanings assigned to them in Section 1 of the Collateral Annex.

Shaded Information is Designated
CONFIDENTIAL per WAC 480-07-160

REDACTED VERSION

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

Shaded Information is Designated
CONFIDENTIAL per WAC 480-07-160

REDACTED VERSION

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

Shaded Information is Designated
CONFIDENTIAL per WAC 480-07-160

REDACTED VERSION

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

Shaded Information is Designated
CONFIDENTIAL per WAC 480-07-160

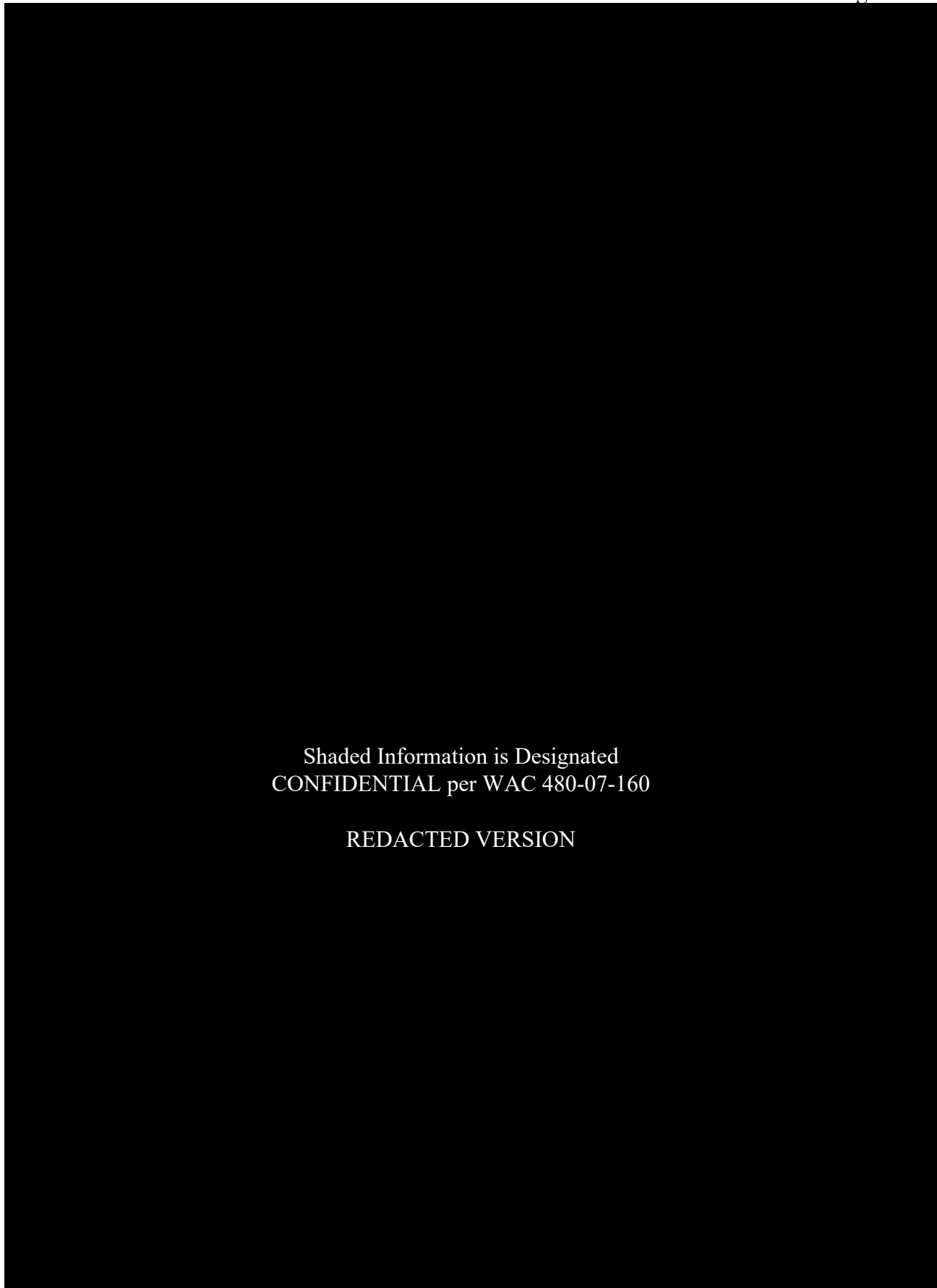
REDACTED VERSION

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

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CONFIDENTIAL per WAC 480-07-160

REDACTED VERSION

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA



Shaded Information is Designated
CONFIDENTIAL per WAC 480-07-160

REDACTED VERSION

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

Shaded Information is Designated
CONFIDENTIAL per WAC 480-07-160

REDACTED VERSION

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

Execution of Cover Sheet Elections:

Party A

Public Utility District No. 1 of Chelan County

Kirk Hudson

[Sign here]

Kirk Hudson
Title: General Manager
Date: February 7, 2023

Party B

Puget Sound Energy, Inc.

Ron Roberts

[Sign here]

Ron Roberts
Title: Vice President, Energy Supply
Date: February 7, 2023

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

**COLLATERAL ANNEX
to the
AGREEMENT(S)**

This Collateral Annex together with the Cover Sheet Elections (collectively, the “Collateral Annex”), between Public Utility District No. 1 of Chelan County, Washington (“Party A”) and Puget Sound Energy, Inc. (“Party B”) (each a “Party” and, collectively, the “Parties”), is given to provide credit assurances to secure each Party's Obligations under the Agreements, as each term is defined below.

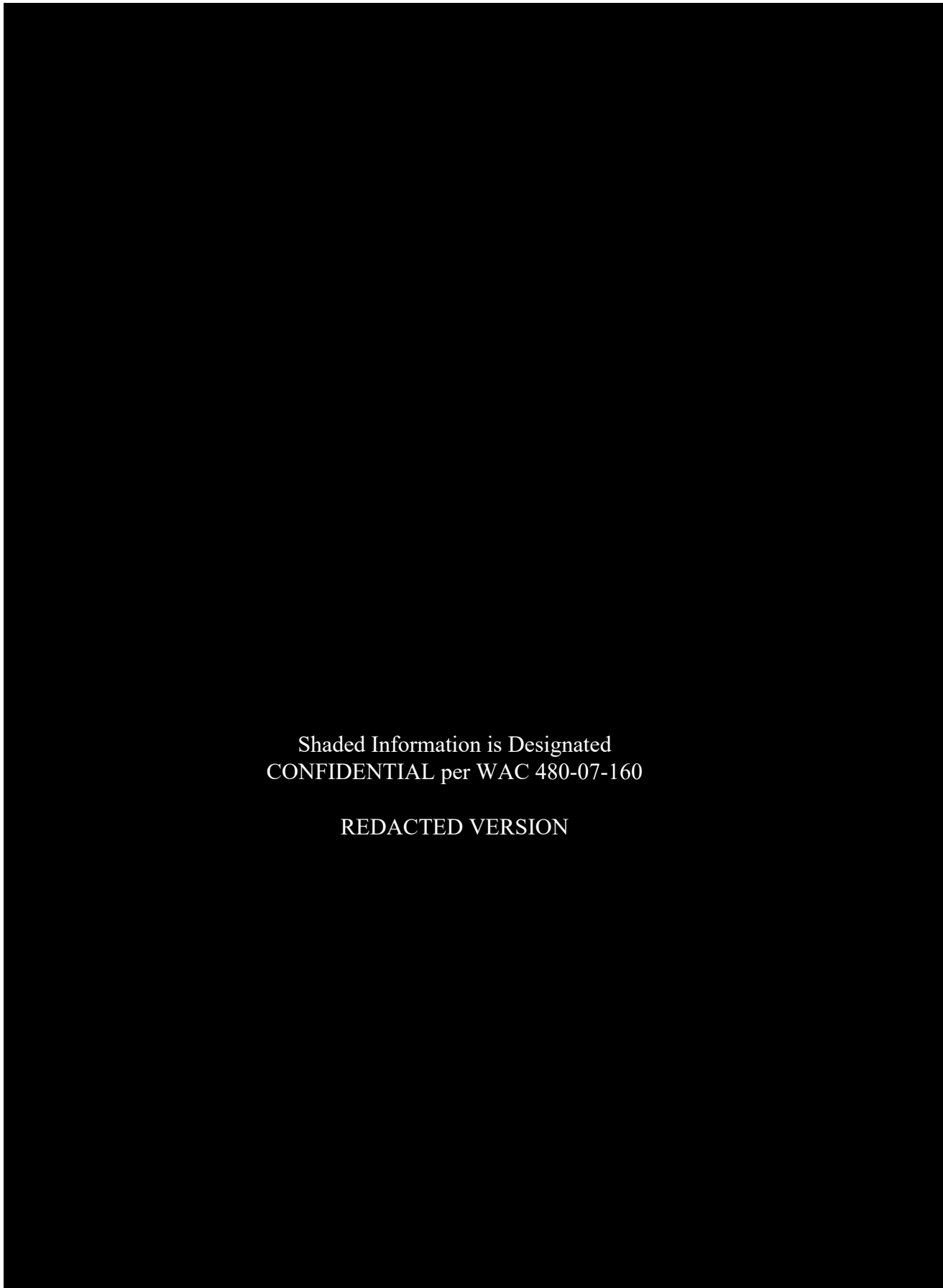
This Collateral Annex shall be effective as of February 7, 2023, (the “Annex Effective Date”) and supersedes the Collateral Annex between the Parties signed April 1, 2021.

The Obligations of each Party to the other Party under the Agreements shall be secured in accordance with the provisions of this Collateral Annex, which sets forth the conditions under which a Party will be required to deliver Performance Assurance and the conditions under which a Party will be required to release and return Performance Assurance. To the extent there are any inconsistencies between the terms and conditions of the Agreements and this Collateral Annex, this Collateral Annex shall prevail. To the extent there are any inconsistencies between the terms and conditions of this Collateral Annex, excluding the Cover Sheet Elections, and the Cover Sheet Elections, the Cover Sheet Elections shall prevail.

Shaded Information is Designated
CONFIDENTIAL per WAC 480-07-160

REDACTED VERSION

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA



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CONFIDENTIAL per WAC 480-07-160

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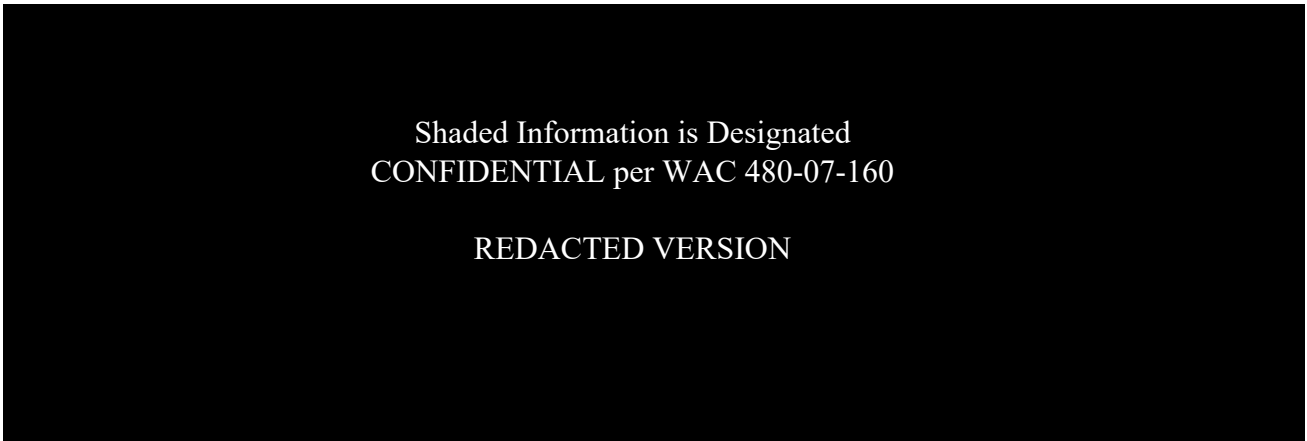
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REDACTED VERSION

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IN WITNESS HEREOF, the Parties have caused this Collateral Annex to be duly executed effective as of the date first written above.

Party A

Party B

Public Utility District No. 1 of Chelan County

Puget Sound Energy, Inc.

Kirk Hudson

Ron Roberts

[Sign here]

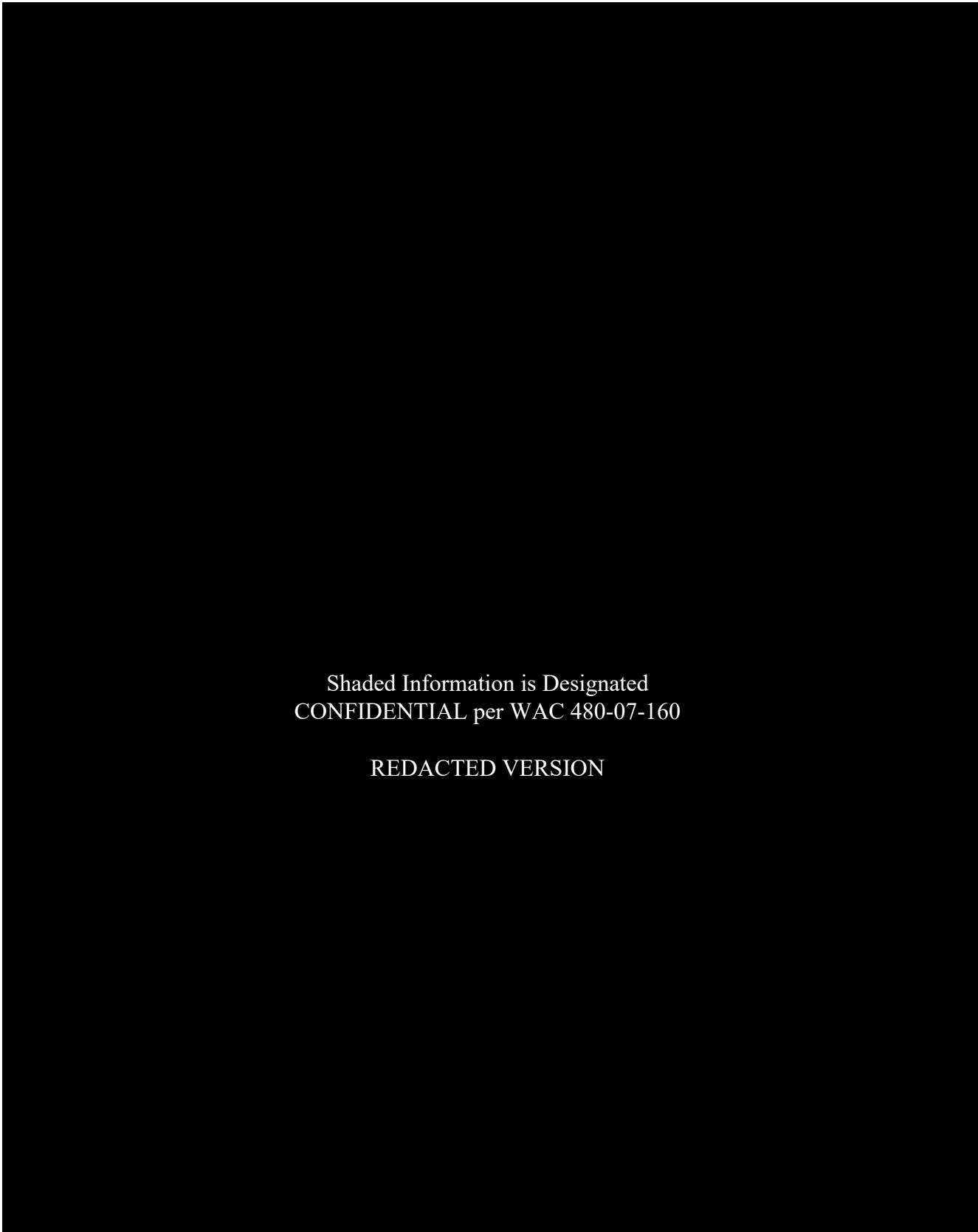
[Sign here]

Kirk Hudson
Title: General Manager
Date: February 7, 2023

Ron Roberts
Title: Vice President, Energy Supply
Date: February 7, 2023

CONTAINS CONFIDENTIAL INFORMATION – COVERED BY NDA

Appendix A to Collateral Annex



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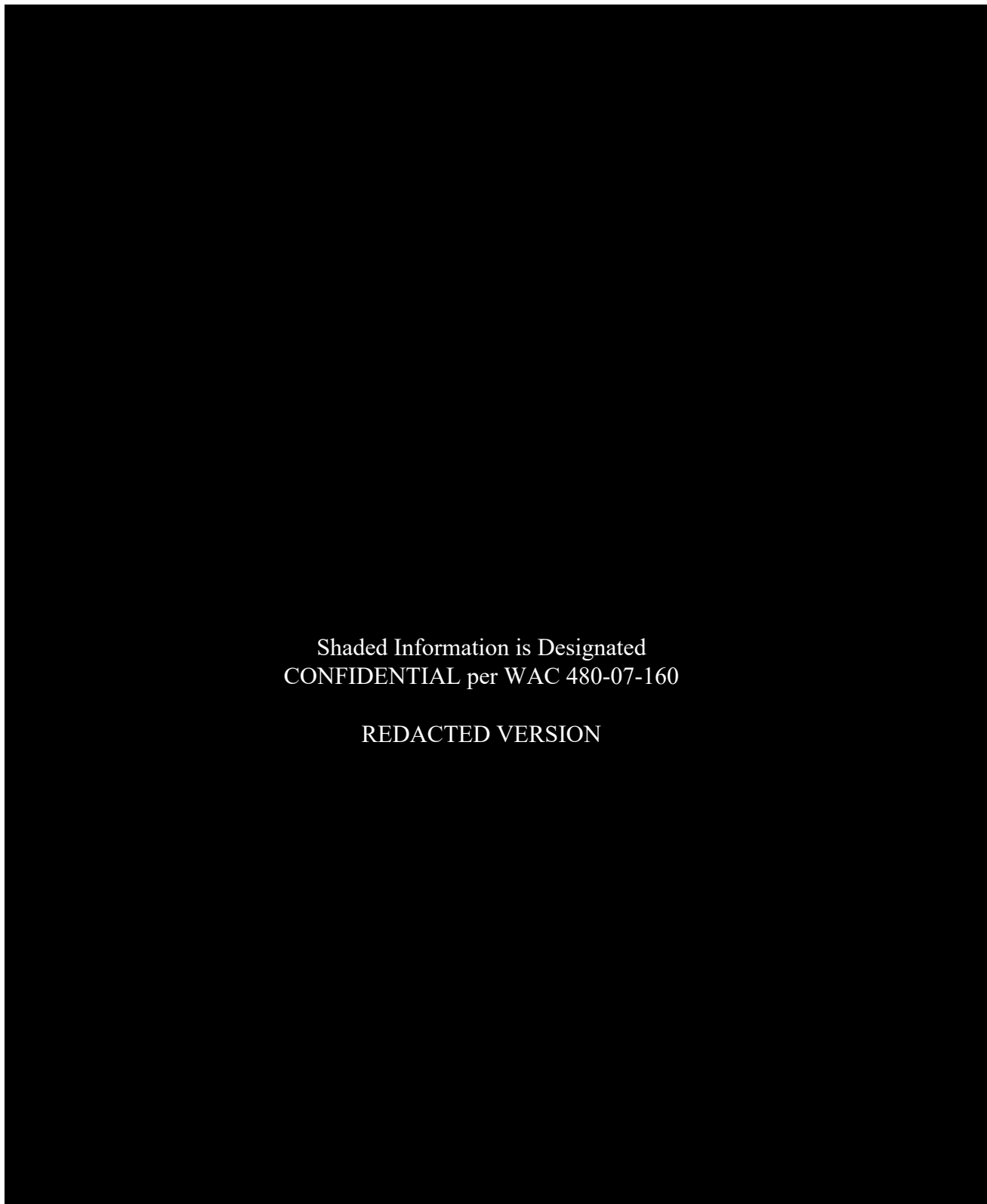
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**SCHEDULE 1
to
Appendix A to Collateral Annex**



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SCHEDULE 1-1

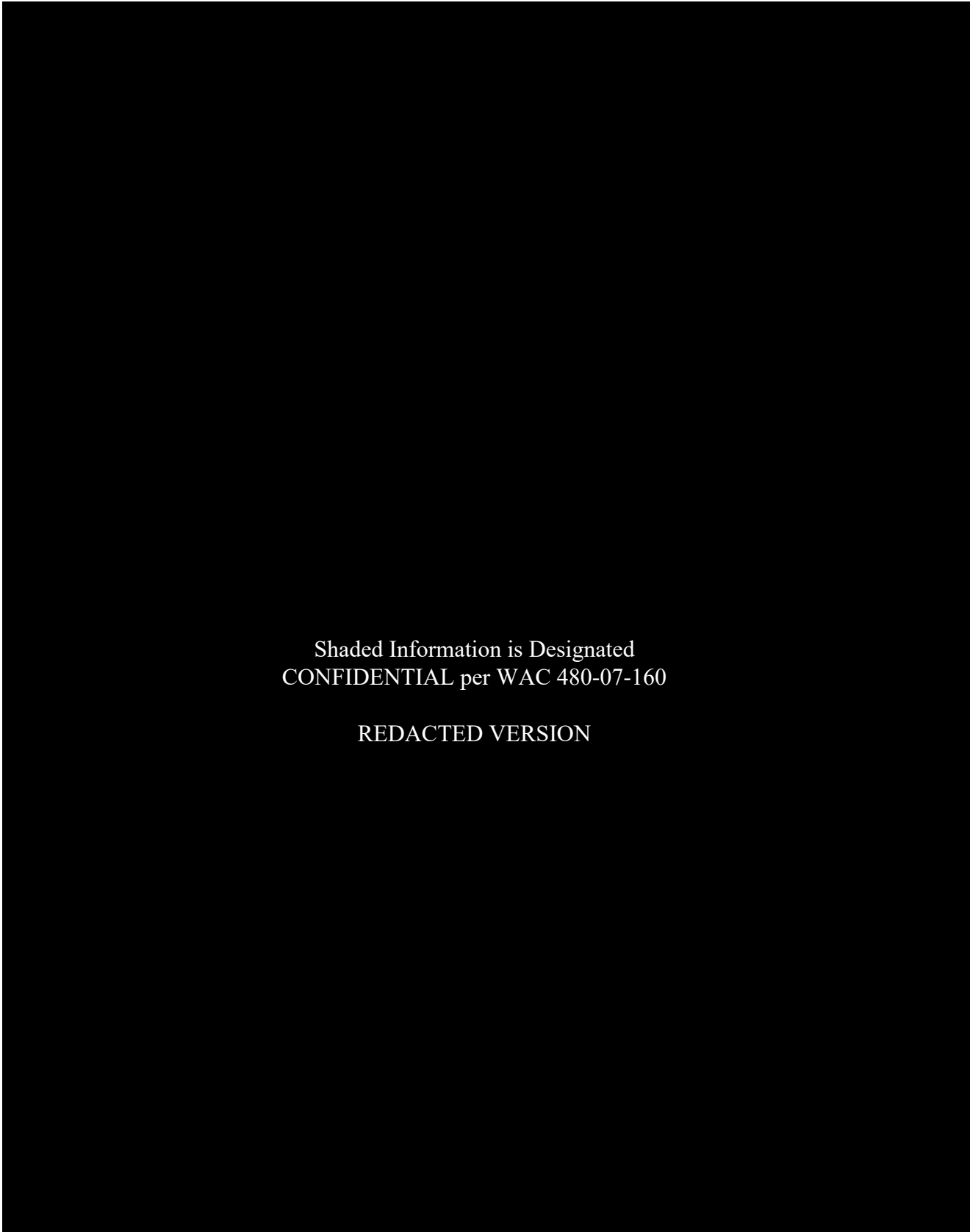


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REDACTED VERSION

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Appendix B to Collateral Annex



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REDACTED VERSION

**SECOND AMENDMENT TO
DYNAMIC TRANSFER AGREEMENT**

This SECOND AMENDMENT TO DYNAMIC TRANSFER AGREEMENT (“Second Amendment”) is executed by and between Public Utility District No. 1 of Chelan County, Washington (the “District”), a municipal corporation of the State of Washington, and Puget Sound Energy (the “Customer”), a corporation organized and existing under the laws of Washington. The District and the Purchaser are referred to as a “Party” and collectively as “Parties.”

RECITALS

WHEREAS, the Parties entered into a Dynamic Transfer Agreement dated November 1, 2019 (the “Contract”), and

WHEREAS, the Parties have amended the Contract with the First Amendment to Dynamic Transfer Agreement dated December 22, 2021, and;

WHEREAS, it has been determined by the Parties that Exhibit A to the Contract should be amended; and

WHEREAS, it has been determined by the Parties that Section 1.4.2 of Exhibit B to the Contract should be amended;

NOW, THEREFORE, in recognition of the foregoing recitals, which are hereby incorporated into this Second Amendment and in consideration of the covenants herein, the Parties agree as follows:

1. Exhibit A to the Contract shall be deleted in its entirety and replaced with the following:

**EXHIBIT A
to
Dynamic Transfer Agreement**

POWER SALES AGREEMENT(S) and OUTPUT CONTRACT(S)

Agreement	Percentage	Last Delivery Date
Power Sales Agreement dated February 1, 2006	25% of the Chelan Power System	October 31, 2031
Contract for Sale of Output from the Rocky Reach Project and Rock Island Project, Slice	5.0% of Rocky Reach Output and 5% of Rock Island Output	December 31, 2026

Product 35		
Power Sales Agreement dated February 7, 2023	25% of the Chelan Power System	October 31, 2051

ATTAINING BALANCING AUTHORITY AREA

PSE (Puget Sound Energy BAA)

NATIVE BALANCING AUTHORITY AREA

CHPD (Chelan BAA)

TRANSMISSION PROVIDER(S)

Not Applicable

TRANSMISSION SERVICE AGREEMENTS

Yearly/Monthly/Daily/Hourly Firm Transmission to be purchased as required

WORK ORDER

N/A

- Section 1.4.2 of Exhibit B to the Contract shall be deleted in its entirety and replaced with the following:

The Pseudo-Tie Request shall be limited to a ramp rate that equals the Purchaser's Percentage Share multiplied by the Rocky Reach and Rock Island's instantaneous maximum rate of change in the level of generation for a specified period within all applicable Operational Constraints as defined in Appendix A of the Contract for Sale of Output from the Rocky Reach Project and Rock Island Project – Slice Product 35 through December 31, 2026 and then defined in Appendix B of the Power Sales Agreement by and Between Public Utility District No. 1 of Chelan County, Washington and Puget

Sound Energy, Inc. dated as of February 7, 2023. The Purchaser's Ramp Rate is a variable quantity based upon limitations.

Example: If Rocky Reach and Rock Island's combined instantaneous maximum rate of change is 160 MW/min and the combined Purchaser's Percentage Share is 30%, then the Pseudo-Tie Request shall be limited to 48 MW/min.

3. The Parties agree that the Contract, as amended by this Second Amendment, is hereby ratified, and that all terms and provision of the Contract, except as expressly modified by this Second Amendment, remain in full force and effect.
4. Each of the individuals executing this Second Amendment warrant that they are the authorized signatory of the entity for which they are signing and have sufficient corporate authority to execute this Second Amendment.

PUBLIC UTILITY DISTRICT NO. 1 OF
CHELAN COUNTY, WASHINGTON

By: *Kirk Hudson*
Kirk Hudson

Title: General Manager

Date: February 7, 2023

PUGET SOUND ENERGY

By: *Ron Roberts*
Ron Roberts

Title: Vice President, Energy Supply

Date: February 7, 2023

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (the “**Agreement**”), dated as of February 7, 2023 (the “**Effective Date**”), is by and between Public Utility District No. 1 of Chelan County, Washington (the “**District**”), a Washington State municipal corporation, and Puget Sound Energy, Inc. (“**PSE**”), a Washington corporation. The District and PSE may be referred to in this Agreement in the singular as a “**Party**” and in the plural as the “**Parties**”.

RECITALS

A. The Parties have entered into a Power Sales Agreement, dated as of February 7, 2023 (the “**Power Sales Agreement**”), a Collateral Annex to the Agreement(s) dated as of February 7, 2023 (the “**Collateral Annex**”), and a Cover Sheet Elections applicable to the Collateral Annex to the Agreement(s) dated as of February 7, 2023 (the “**Cover Sheet Elections**”) by and between the District and PSE.

B. Sections 20.02, 20.03, and 20.04 of the Power Sales Agreement contain financial, commercial, and proprietary information of the Parties that, if disclosed or used in violation of this Agreement could cause irreparable harm to a Party.

C. The Collateral Annex contains financial, commercial, and proprietary information of the Parties that, if disclosed or used in violation of this Agreement could cause irreparable harm to a Party.

D. The Cover Sheet Elections contains financial, commercial, and proprietary information of the Parties that, if disclosed or used in violation of this Agreement could cause irreparable harm to a Party.

E. The Parties are willing to enter into the Power Sales Agreement, the Collateral Annex and the Cover Sheet Elections in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the District and PSE do hereby mutually agree as follows:

1. Definitions

(a) “**Agreement**,” “**District**,” “**Effective Date**,” “**PSE**,” “**Party**,” and “**Parties**” have the meanings ascribed to such terms in the introductory paragraph of this Agreement.

(b) “**Collateral Annex**” has the meaning ascribed to such term in Recital A of this Agreement.

(c) “**Confidential Information**” shall mean (i) the terms and conditions of Sections 20.02, 20.03, and 20.04 of the Power Sales Agreement; (ii) the amounts in the column entitled “Fixed Annual Charge” on Appendix E (Fixed Annual Charge); and (iii) all terms and conditions of each of the Collateral Annex and the Cover Sheet Elections.

(d) “**Cover Sheet Elections**” has the meaning ascribed to such term in Recital A of this Agreement.

(e) “**Notified Party**” has the meaning ascribed to such term in Section 5 of this Agreement.

(f) “**Notifying Party**” has the meaning ascribed to such term in Section 5 of this Agreement.

(g) “**Person**” shall be broadly interpreted to include, without limitation, any corporation, company, partnership, other entity or individual.

(h) “**Power Sales Agreement**” has the meaning ascribed to such term in Recital A of this Agreement.

(i) “**Representatives**” shall mean as to any Person, its directors, officers, employees, agents and advisors (including, without limitation, financial advisors, attorneys and accountants).

2. Confidentiality and Non-Use. In consideration of each Party’s entering into the Power Sales Agreement, the Collateral Annex and the Cover Sheet Elections, the Parties agree as follows:

(a) Each Party shall hold confidential and not disclose to any Person, without the prior written consent of the other Party, all Confidential Information; *provided, however,* that each Party may disclose Confidential Information to its Representatives who are actively and directly participating in, or who otherwise need to know the Confidential Information for the purpose of, negotiating, executing, or implementing the Power Sales Agreement, the Collateral Annex and the Cover Sheet Elections; and

(b) Each Party shall cause all its Representatives to observe the terms of this Agreement and shall be responsible for any breach of the terms of this Agreement by it or its Representatives; and

(c) Neither a Party nor the Representatives of such Party shall use the Confidential Information (i) in any way detrimental to the other Party or (ii) for any purpose other than in connection with the Power Sales Agreement.

3. **Exceptions to the Confidentiality and Non-Use Obligations.** The obligations imposed by Section 2 of this Agreement shall not apply, or shall cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information becomes, through no breach of a Party's obligations under this Agreement, known to the public.

4. **Compelled Disclosure of Confidential Information.** Where a Party receives a lawful request or order to disclose Confidential Information, including without limitation, pursuant to the requirements of a regulatory or governmental agency, subpoena, court order, discovery, request pursuant to the Washington State Public Records Act (Chapter 42.56 RCW), or other operation of law, the Party that receives such lawful request or order shall not release the requested Confidential Information sooner than ten (10) days (or such shorter amount of days as the law will allow, if the law does not allow for ten (10) days) after giving the other Party written notice (including by electronic mail) to allow the other Party to obtain an order preventing its release. The Party attempting to obtain an order preventing release shall do so at its sole expense. In the event no such protective order is obtained within the aforementioned period, the Party that receives the lawful request or order is permitted to comply with the request for disclosure without liability under this Agreement.

5. **Section 22 Filing.** The Parties acknowledge that, as provided in the Power Sales Agreement, the District will apply to the Federal Energy Regulatory Commission (FERC) for approval of the Power Sales Agreement under Section 22 of the Federal Power Act. The Parties acknowledge that a copy of the Power Sales Agreement with Confidential Information redacted will be attached to the application, which will be publicly available. If Confidential Information must, in the District's reasonable judgment, be provided to FERC to obtain approval, the District must notify PSE in advance of providing the Confidential Information and must make reasonable efforts to limit the scope of the disclosure and to protect the Confidential Information from public disclosure.

6. **Notice of Breach.** A Party (the "Notifying Party") shall notify the other Party (the "Notified Party") immediately upon discovery of any unauthorized use or disclosure of Confidential Information by the Notifying Party or its Representatives, whether such disclosure occurs through action or inaction, and shall assist the Notified Party to regain possession of Confidential Information and prevent its further unauthorized use. The Notifying Party shall cooperate in prosecuting any claims against third parties for unauthorized use and shall bear all costs associated with pursuing those claims. The Notified Party, in addition to any money damages, shall be entitled to obtain an injunction prohibiting the further breach of this agreement without the necessity of posting or filing a bond or other security, even if otherwise required.

7. **No Representations and Warranties.** Each of the Parties make no representation or warranties, express or implied, of any kind to the other Party with respect to the Confidential Information, including without limitation with respect to the accuracy or completeness thereof. Any representations or warranties shall be made thereby, if at all, only in definitive written agreements that may be entered into hereafter.

8. Termination; Duration of Obligations. Unless sooner terminated by mutual written Agreement of the Parties hereto, this Agreement and the obligations under this Agreement shall be coterminous with, and shall terminate upon the expiration (including extensions) or other termination of, the Power Sales Agreement.

9. Entire Agreement. This Agreement represents the entire understanding and agreement of the Parties and supersedes all prior communications, agreements and understandings between the Parties relating to the subject matter hereof.

10. Waivers; Amendments; Assignment; Counterparts. This Agreement may not be modified, amended or waived except by a written instrument duly executed by both Parties. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege under this Agreement. This Agreement may not be assigned by either Party without the prior written consent of the other and shall be binding on, and inure to the benefit of, the respective successors of the Parties thereto. This Agreement may be signed in two (2) or more counterpart originals, each of which shall constitute an original document. The Parties agree that this Agreement can be executed via facsimile signatures and be binding.

11. Governing Law; Disputes. This Agreement is made subject to and shall be construed under the laws of the State of Washington, without giving effect to its principles or rules regarding conflicts of laws, and that the state courts situated in the State of Washington shall have exclusive jurisdiction to resolve any disputes with respect to this Agreement or the Confidential Information with each Party irrevocably consenting to the jurisdiction thereof for any actions, suits or proceedings arising out of or relating to this Agreement or the Confidential Information, and each Party irrevocably waives its rights to jury trials with respect thereto.

12. Remedies. Without prejudice to the rights and remedies otherwise available to either Party, each Party shall be entitled to equitable relief by way of injunction or otherwise if the other Party or any Representative of the other Party breaches or threatens to breach any of the provisions of this Agreement and the other Party shall not plead in defense thereto that there would be an adequate remedy at law.


IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by their respective, fully authorized representatives as of the Effective Date.

District:

Public Utility District No. 1 of
Chelan County, Washington

PSE:

Puget Sound Energy, Inc.

By: 
Name: Kirk Hudson
Title: General Manager
Date: 2/7/2023

By: _____
Name: Ron Roberts
Title: VP Energy Supply
Date: 02/07/2023