IDAHO POWER®

All-Source Request for Proposals (RFP)

For Peak Capacity & Energy Resources

2032

Zycus Event: 1324434753
RFP Issued: February 20, 2026
Bids Due: May 29, 2026

Idaho Power Company
P.O. Box 70
Boise, ID 83707

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EXHIBIT D – Non-Price Scoring Sheet (Excel workbook)

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EXHIBIT F.1-F.4 – Draft Form Agreements and Term Sheets for Resource-Based Proposals

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EXHIBIT H – Counterparty Financial Questionnaire

EXHIBIT I – Draft Form Letter of Credit

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EXHIBIT L – Cyber Security Questionnaire

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1. Disclaimer

The information contained in this Request for Proposals (RFP) is presented to assist interested parties in deciding whether to submit a bid. Idaho Power Company (IPC), an operating company subsidiary of IDACORP, Inc., is issuing this RFP to solicit formal bids from qualified companies (each a Bidder) and does not represent this information to be comprehensive or to contain all the information that a Bidder may need to consider when submitting a bid. None of IPC, its affiliates, or their respective employees, directors, officers, customers, agents, and consultants makes—or will be deemed to have made—any current or future representation, promise, or warranty—express or implied—as to the accuracy, reliability, or completeness of the information contained herein, or in any document or information made available to a Bidder—whether the aforementioned parties knew or should have known of any errors or omissions, or were responsible for their inclusion in, or omission from, this RFP.

No part of this RFP and no part of any subsequent correspondence by IPC, its affiliates, or their respective employees, directors, officers, customers, agents, or consultants shall be taken as providing legal, financial, or other advice, or as establishing a contract or contractual obligation. IPC reserves the right to request from Bidders information not explicitly detailed in this document, obtain clarification from Bidders concerning bids, conduct contract development discussions with selected Bidders, conduct discussions with members of the Evaluation Team, and other support resources as described in this RFP. The requirements specified in this RFP reflect those presently known. IPC reservices the right to vary, in detail, the requirements and/or to issue addenda to the RFP. In the event it becomes necessary to revise any part of the RFP, addenda will be provided to Bidders included in the current and applicable stage of the RFP.

IPC will, in its sole discretion and without limitation, evaluate bids and proceed in the manner IPC deems appropriate. IPC reserves the right to reject any and all, or portions of any bid submitted by Bidders for failure to meet any criteria set forth in this RFP or otherwise, and to accept bids other than the lowest cost bid.

This RFP has been prepared solely to solicit bids and is not a contract offer. This RFP is not binding on IPC. The only document that will be binding on IPC is an agreement duly executed by IPC and the successful Bidder (if any) after the completion of the evaluation process and the award and negotiation of an agreement. IPC reserves the right to reject any and all bids submitted by Bidders. The issuance of this RFP does not obligate IPC to purchase any product or services offered by Bidder or any other entity. Furthermore, IPC may choose, at its sole discretion, to abandon the RFP process in its entirety. Bidders agree they submit bids without recourse against IPC; IDACORP, Inc.; any affiliate of IDACORP, Inc., or any of their respective employees, agents, officers, or directors for failure to accept an offer for any reason. IPC may decline to enter into any agreement with any Bidder, terminate negotiations with any Bidder, or abandon the RFP process in its entirety at any time, for any reason, and without notice thereof. Bidders who submit bids agree to do so without legal recourse against IPC, its affiliates or their respective employees, directors, officers, customers, agents or consultants for rejection of their bids or for failure to execute an agreement for any reason. IPC and its affiliates shall not be liable to any Bidder or other party in law or equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP. Bidder shall conform in all material respects to all applicable laws, ordinances, rules, and regulations and nothing in this RFP shall be construed to require IPC or Bidder to act in a manner contrary to law. Except as otherwise provided in the rules and orders of the Idaho Public

Utilities Commission (IPUC) and the Public Utility Commission of Oregon (OPUC), (jointly the Commissions), by submitting its bid, a Bidder waives any right to challenge any evaluation by IPC of its bid. Bidders whose bid may be selected in response to this RFP acknowledges that it assumes full legal responsibility for the accuracy, validity, and legality of the work provided in conformance with this RFP. By submitting its bid, a Bidder waives any right to challenge any determination of IPC to select or reject its bid. IPC reserves the right to accept the bid in whole or in part, and to award to more than one Bidder. Furthermore, Bidder understands that any "award" by IPC does not obligate IPC in any way. IPC will not be obligated to any part unless and until IPC executes a definitive agreement between the parties.

Bidder will absorb all costs incurred in responding to this RFP, including without limitation, costs related to the preparation and presentation of its response. All materials submitted by the Bidder immediately become the property of IPC. Any exception will require written agreement by both parties prior to the time of submission.

In responding to this RFP, the Bidder shall adhere to best business and ethical practices. The Bidder shall adhere to IPC's Supplier Code of Conduct, also available at idahopower.com.

The Bidder is specifically notified that failure to comply with any part of this RFP may result in disqualification of the bid, at IPC's sole discretion.

This RFP, was approved by the Idaho Public Utilities Commission Order No. 37018.

2. Purpose

2.1. BACKGROUND

IDACORP, Inc., is a holding company formed in 1998. Comprised of regulated and non-regulated businesses, its origins lie with Idaho Power Company (IPC), a regulated electric utility that began operations in 1916. Today, IPC is the largest regulated electric utility in the state of Idaho and IDACORP, Inc.'s chief subsidiary. IPC serves more than 650,000 residential, business, agricultural and industrial customers. The company's service area covers approximately 24,000 square miles, including portions of eastern Oregon. Learn more about IPC at idahopower.com.

IPC currently serves its customers by supplying low-cost, reliable, and clean energy. Affordable, clean hydropower is the largest source of energy for customers. Power generation comes from a diverse set of resources that continues to meet a growing demand. For a more detailed description of current generation resources, please visit idahopower.com/energy-environment/energy/energy-sources/.

IPC's service area continues to experience customer growth and an increasing peak demand (load) for electricity. IPC anticipates sustained load growth that will require the procurement of new resources to meet energy requirements and peak demand and maintain system reliability as identified in the most recent 2025 Integrated Resource Plan (IRP). The addition of new resources to meet peak demand is critical to ensure IPC can continue to reliably meet the growing demands on its electrical system and serve its customers.

2.2. REGULATORY COMPLIANCE

Regulatory approval of this RFP is required.[1] The RFP is resource-agnostic and solicits bids from all feasible resource types with sufficient lead time to meet the desired commercial operation date. IPC is releasing this RFP solicitation to meet the objective of determining the least-cost and least-risk resource to satisfy the system needs. The selection will be conducted through a fair, transparent, and confidential evaluation process as defined throughout this RFP.

Execution of any agreement may ultimately be subject to regulatory approval. For the IPUC, this could include, but is not limited to, a request for a certificate of public convenience and necessity (CPCN) from IPC. IPC reserves the right to: 1) inform the IPUC that IPC could not reach agreement with the Bidder of a selected resource; 2) request IPUC approval of any agreements it enters with successful Bidders (e.g., CPCN applications); and 3) terminate any agreement if IPC fails to receive IPUC approval of submitted agreements or applications. Bidder shall provide any and all information and documentation reasonably requested by IPC to support such applications and requests.

2.3. THE SOLICITATION AND NEED

IPC is issuing this RFP to solicit formal bids from Bidders for two types of electric energy and capacity products. The first type is unit-contingent energy where capacity is delivered from specific electric resources (Resource-Based Proposals). This product includes asset purchases, power purchase agreements, and battery storage agreements with exclusive ownership by IPC of any and all environmental attributes associated with all energy generated. The second type is firm energy

[1] See IPUC's Procedures for Soliciting Large Supply-Side Resources (Order No. 36898) and Oregon Administrative Rule 860-089-0100.

contracts (WSPP Schedule C or equivalent preferred) that meet the eligibility requirements of the Western Resource Adequacy Program (WRAP) for qualifying contracts (Market Purchase Proposals). The eligible types of bids are described further in Section 3 of this RFP. Details on the bid submission process and the bid evaluation process are also described further in this RFP. Only bids submitted through this RFP will be evaluated, regardless of the status of bids currently participating in the 2028 RFP.

IPC's annual capacity position developed to inform its 2025 IRP demonstrates the company will have future resource needs. The 2025 IRP identifies the potential need for incremental peak capacity and supply-side resources. Recent regulatory filings for resources have built off the identified 2025 IRP need and have shown an incremental perfect capacity need of a total of at least 200 megawatts (MW) in 2031 and 2032 with a greater need likely in 2032. The need identified is subject to change based on updated information regarding load and resources, as well as contracts backing firm transmission.

IPC will accept bids for energy or capacity from Resource-Based Proposals and Market Purchase Proposals. Exhibit E – Transmission Paths and Delivery Points provides further information on the transmission paths and delivery points for either type of bid. Any information regarding transmission paths or available transmission capability is as of the date of this RFP; up-to-date information is available on the Open Access Same-Time Information System (OASIS). As part of any bid submitted, a Bidder must indicate whether the bid is contingent on delivery of energy across transmission rights controlled by IPC.

The bids will be evaluated by a team of IPC staff and retained consultants with relevant subject matter expertise (Evaluation Team).

The process of issuing and responding to this RFP, evaluation and selection of bids, and the negotiation and approval of the agreement(s), is known as the Solicitation. Bidders interested in participating in the Solicitation and submitting a bid must first register via the third-party solicitation portal, Zycus, described in Section 2.6 of this RFP. This RFP sets forth the terms and conditions by which IPC will perform the Solicitation. The Bidder agrees to be bound by all the terms, conditions, and other provisions of this RFP and any addenda to it that may be issued by IPC. This RFP governs the Solicitation and supersedes any other written or oral form of communication between Bidders and IPC concerning the Solicitation.

2.4. IPC SELF-BUILD RESOURCES

In addition to bids from Bidders, a separate team of IPC staff and retained consultants (Internal Bid Team) may submit Resource-Based Proposal(s) in response to this RFP (IPC Internal Bid). The Evaluation Team will treat the Internal Bid Team as a Bidder. The Evaluation Team will subject any IPC Internal Bid from the Internal Bid Team to the same requirements, evaluation methodology, and other standards specified in this RFP for a bid from a third-party Bidder. Furthermore, the Evaluation Team and the Internal Bid Team must comply with an IPC Standards of Conduct Protocol (Separation of Function) to ensure the Evaluation Team functions independently from the Internal Bid Team, does not provide access to any non-public information or undue preference to the Internal Bid Team, and provides the Internal Bid Team and Bidders equal access to non-public information related to the competitive bidding process for new generation resource procurement.

An IPC Internal Bid may include a bid for a self-build project to be owned by IPC and will be subject to the requirements described in this RFP. An IPC Internal Bid may also include partnership arrangements or agreements between the Internal Bid Team and third parties that may collaborate to submit a joint IPC Internal Bid.

2.5. CONFIDENTIALITY

Bidder acknowledges and agrees all information obtained or produced in relation to this RFP is the sole property of IPC and shall not be released or disclosed to any person or entity for any purpose other than providing a bid to IPC, without the express written consent of IPC. Bidder agrees not to make any public comments or disclosures, including statements made for advertising purposes, regarding this RFP to the media or any other party without prior written consent of IPC. Bidder shall forward any media or other inquiries regarding this RFP to IPC.

Bidders shall specifically designate and clearly label any bid material(s) or portions thereof, the Bidder deems to contain proprietary information as "CONFIDENTIAL." IPC reserves the right to release all bid materials, including those marked "CONFIDENTIAL," to its affiliates and its affiliates' agents, advisors, and consultants, for purposes of bid evaluation. IPC will, to the extent required by law, advise each agent, advisor, or consultant that receives such claimed confidential information of its obligations to protect such information. All information, regardless of its confidential or proprietary nature, is subject to review by the Commissions and other governmental entities and courts with jurisdiction and may be subject to legal discovery. The Bidder acknowledges and agrees, IPC may provide a copy of the Bidder's materials to the Commissions for review and compliance with this solicitation. All Bidders whose bids are advanced to negotiations will be required to execute a Mutual Nondisclosure and Confidentiality Agreement (Confidentiality Agreement) in the form of Exhibit G – Mutual Non-Disclosure Agreement with IPC prior to further discussion and evaluation of the bid by IPC.

2.6. SOLICITATION PORTAL AND RESTRICTION ON COMMUNICATIONS

IPC has opened a web-based portal hosted on the Zycus sourcing platform (the Portal). The web link to register within the Portal is zsn.zycus.com/guest/genericRegister/IDA822. Once registered, instructions will be provided within the Portal to guide Bidders on how to upload documents. All information exchanged between the Bidder and IPC concerning the Solicitation must only be via the Portal from the time the Portal is open until it is closed by IPC. All information, including pre-bid materials, questions, and IPC's response to questions, will be posted in the Portal or on the IPC website (public information) at idahopower.com/about-us/doing-business-with-us/request-for-resources/. The Portal allows a Bidder to see only its own information and not the information of other Bidders.

IPC can communicate with Bidders through the Portal. Other than written communication through the Portal, Bidders are prohibited from communicating with IPC employees, representatives, staff, or board members regarding the Solicitation during the period in which the Portal is open. Restricted communication includes, but is not limited to, "thank you" letters, phone calls, emails, and any contact that results in the direct or indirect discussion of the Solicitation and/or submitted bids. Violation of this provision by Bidders or their agents may lead to disqualification.

The Bidder is responsible for ensuring it has registered for, and posts documents to, the correct portal hosted by Zycus. The Bidder registering for access to the Portal must be a representative of the Bidder and counterparty with which IPC will engage in any future negotiations, and not consultants or attorneys for the Bidder.

To ensure a competitive bid process, Bidders must not disclose its participation in this Solicitation (other than by attendance at any meeting held by IPC with respect to the Solicitation) or collaborate on or discuss with any other Bidder or potential bidding strategies or the substance of any bid(s), including and without limitation, the price or any other terms or conditions of any bid(s). This does not preclude parties from partnering in good faith to submit a competitive bid.

Questions or support needs regarding the Portal should be directed to: ResourceRFP@idahopower.com. Any questions that are relevant to all Bidders will be provided in response through the Portal.

2.7. SCHEDULE

The key milestones for the Solicitation and their currently scheduled dates are provided in Table 2-1.

Table 2-1. Key Milestones for the Solicitation

No.	Milestone	Date
1	Draft RFP Filed for Regulatory Approval	2/20/2026
2	Bidders Submit Bid Definition Forms (Notice of Intent)	4/10/2026
3	Approval of 2032 AS RFP	4/24/2026
4	Final AS RFP Released	4/27/2026
5	Bid Entry Forms Distributed to Bidders	4/29/2026
6	Last Day for All-Source RFP Questions	5/13/2026
7	Bids Due	5/29/2026
8	Bid Eligibility Screening Completed	6/10/2026
9	Initial Shortlist	6/26/2026
10	IPC Notifies Bidders Selected to Initial Shortlist	6/30/2026
11	Final Shortlist	7/17/2026
12	IPC Notifies Bidders Selected to Final Shortlist	7/31/2026
13	IPC Begins Preliminary Contract Negotiations	8/17/2026
14	Contract Execution	10/31/2026
15	Guaranteed Commercial Operation Date	May 31, 2031/2032

This schedule and documents associated with the Solicitation are subject to change. IPC will endeavor to notify Bidders of any changes to the Solicitation but shall not be liable for any costs or liability incurred by Bidders or any other party due to a change or for failing to provide notice or acceptable notice of any change. Bidders should factor this schedule, and any changes thereto, into their project development timelines and bids.

Bidders should carefully review this RFP for questions, clarifications, defects, and questionable or objectionable materials. Comments and questions concerning clarifications, defects, and questionable or objectionable material must be submitted through the Portal and must be submitted on or before the date and time specified in the above schedule. IPC may not respond to questions submitted after this date. All questions and their applicable responses will be provided to Bidders via the Portal.

2.8. ANNOUNCEMENT PLAN

The draft RFP, and the filing for regulatory approval serves as the Announcement Plan to prepare for the release of the Final RFP. Bidders should review the RFP in its entirety with a particular focus in this Section 2 to ensure anticipated communication and Final RFP release information is understood. The RFP is posted to IPC's Request for New Resources page at idahopower.com/about-us/doing-business-with-us/request-for-resources/. All Bidders who register according to Section 2.6 will also receive the RFP and applicable exhibits and workbooks for inclusion and participation.

3. Proposal Specifications

A bid must demonstrate the specifications stated in this section are satisfied.

3.1. ELIGIBLE PROPOSALS

The proposals eligible to be bid in response to the RFP are aligned with two types of electric energy and capacity products.

The first type, Resource-Based Proposals, are unit-contingent energy and capacity delivered from electric resources that support the 2025 IRP capacity and energy needs, as those capacity and energy needs may be updated during the course of this RFP. All Resource-Based Proposals must be located within the IPC Balancing Authority (BA) area or demonstrate transmission rights to the IPC BA. Additional requirements for Resource-Based Proposals are found in Section 4.

The second type, Market Purchase Proposals, are firm energy (preference for WSPP Schedule C or equivalent) that meet the eligibility requirements of the WRAP for qualifying contracts. Additional requirements for Market Purchase Proposals are found in Section 5.

Table 3-1. Resource Based Proposal Scope Summary

Scope Item	Description
Ownership and Agreement Types	Asset Purchase Agreements (which may include Build-Transfer Agreements (BTA)) — Asset acquisition of the proposed facility and related assets, where the Seller assumes development and construction risk. Power Purchase Agreements (PPA) — Power purchase for energy, capacity, and all environmental attributes from a facility. Battery Storage Agreements (BSA) — Purchase of capacity and the charging/discharging of energy from battery facilities. Any hybrid proposals that include multiple resource technologies co-located using the same point of interconnection will also require operational agreements that establish protocols related to scheduling and dispatch (for example solar + battery energy storage system (BESS)).
Term	IPC is not prescribing a specific term requirement but prefers terms consistent with the life of the asset.
First Delivery to Idaho Power	Prior to May 31, 2032. IPC will evaluate all bids that provide delivery by that date. IPC prefers commercial operation dates (or, for existing resources, date of commencement of delivery to IPC) between April 1 and May 31 of the respective year (2031 and 2032) and, to the extent practicable, will negotiate with bidders to align the delivery date within that window.
Resource Status	Existing (which can deliver incremental capacity that is not otherwise already contracted with IPC) or proposed new late-stage development.
Dispatch Rights	For dispatchable generation (e.g., storage and gas-fired generation), IPC will have the right to dispatch the facility across the full range of the proposed capacity (0–100%), contingent on the capabilities of the generator (e.g., minimum dispatch level, ramp rates)
Interconnection	IPC Transmission System or Non-IPC Transmission Systems with all necessary transmission rights to the IPC BA area
Delivery Point	Within the boundary of the BA, or outside with all necessary transmission rights to the BA
Other	If the facility generates environmental attributes, bids must include all environmental attributes, including Renewable Energy Certificates (REC), if any. Bidders will be responsible for ensuring RECs are bundled, and that they are established through Western Renewable Energy Generation Information System (WREGIS). Proposed pricing for Asset Purchases shall include Operating and Maintenance (O&M), Long-Term Services Agreement (LTSA), and warranty costs for the proposed term.

Table 3-2. Market Purchase Proposals

Scope Item	Description
Contract Structure	Agreement for purchase of firm energy and capacity (prefer WSPP Agreement Schedule C or equivalent) meeting WRAP eligibility requirements for qualifying contracts. Agreement may take the form of a confirmation under a mutually agreeable master agreement (e.g., WSPP or other), or a mutually agreeable standalone agreement.
Term	3 years or more preferred.
Delivery Months	Either or both summer (June – September) or winter (November – February) preferred. IPC will consider other proposals.
First Delivery	Prior to May 31, 2032. IPC will evaluate all bids that provide delivery by that date. IPC prefers first delivery dates between April 1 and May 31 of the respective year (2031 and 2032) and, to the extent practicable, will negotiate with bidders to align the delivery date within that window.
Pricing	Index-based preferred, but IPC will consider other proposals. Pricing should not include costs of regulatory structures not applicable in Idaho or Oregon and should be based on a product with sinking in Idaho or Oregon.
Product	Capacity with callable energy. Prefer flexibility to shape energy deliveries and quantities into specific days or hours. IPC will consider other proposals.
Interconnection	IPC Transmission System, or Non-IPC Transmission Systems with all necessary transmission rights to an eligible Point of Delivery
Delivery Point	Delivery to an eligible Point of Delivery as listed in Exhibit E – Transmission Paths and Delivery Points.

3.2. ALTERNATIVE PROPOSALS

IPC may also accept other proposal types that meet the intent and electrical functionality criteria outlined in this RFP. Bidders who submit a proposal not specifically identified in this RFP must fully describe how their bid can meet the general desires and intent of the RFP. Proposal types that are not eligible include but are not limited to; energy or capacity that is not electrical (e.g., thermal energy storage without conversion to electric energy); renewable energy credits without the associated energy (Unbundled RECs); and financial instruments used to mitigate variable cost exposure without associated energy or capacity (Financial Firming).

3.3. TRANSMISSION ALTERNATIVES

As part of IPC's IRP processes, in addition to supply- and demand-side resources, IPC is directed to give equal and balanced treatment to transmission resources. Therefore, IPC will also accept bids for transmission ownership, service, or long-term rights that may meet energy and capacity needs identified above.

4. Resource-Based Proposals: Additional Specifications and Instructions

4.1. MINIMUM REQUIREMENTS

IPC has specified minimum requirements for participating bids (the Minimum Requirements) for Resource-Based Proposals. These requirements are listed in Exhibit C – Bid Eligibility Checklist. Non-conforming bids will be removed from further evaluation.

4.2. DELIVERY AND RESOURCE STATUS

IPC prefers bids from resources with proof of generator interconnection status and ability to deliver, such as a pending or executed Generation Interconnection Agreement (LGIA or SGIA), progress or status of the interconnection study, and/or understanding of contingent queue projects that may hinder deliverability.

4.3. AGREEMENT TYPES

As reflected in Table 3-1 , Bidders are encouraged to offer bids under three identified structures: 1) a PPA with exclusive rights for IPC to any and all capacity and environmental attributes associated with the energy generated, with IPC having full commitment and dispatch control of dispatchable resources; 2) an asset purchase, which may include a BTA whereby the Bidder develops the project, assumes responsibility for construction, but ultimately transfers ownership of the asset to IPC or an agreement for the purchase of an existing asset; and 3) a BSA with exclusive rights and dispatch control for IPC to the capacity and the charging/discharging of a battery. IPC prefers term lengths that match the life of the asset that will help in cost comparisons between Bidders.

Bidders are encouraged to propose resources that maximize energy delivery and flexibility to support IPC's needs during hours that are most valuable to IPC. Information concerning the hours that are most valuable to IPC can be found in Appendix D of IPC's 2025 IRP, starting on page 13.

Bids for new resources (a Project) to be owned by IPC must assume the parties will execute a BTA. Under a BTA, the Bidder is responsible for all aspects of the development and construction of the Project, including but not limited to, permitting, design, development, engineering, procurement, construction, interconnection, and all related costs up to achieving the to-be-agreed upon milestone, which will not be earlier than mechanical completion or later than the date the Project is placed into service for tax purposes. After reaching the milestone, the Bidder will transfer ownership of the Project assets to IPC in exchange for a purchase price. Bids that contemplate the transfer of 100% equity interests in a single-member LLC are acceptable. After purchase, the Bidder will remain responsible for the completion of the Project pursuant to a Construction Completion Management Agreement. IPC may elect to enter other types of agreements proposed by the Bidder, including an Engineering Procurement Construction (EPC) agreement, operation and maintenance service agreements, or other arrangements that generally achieve the desired results.

Bids for existing resources (a Plant) not already contracted to deliver to IPC after May 31 of the respective year, to be owned by IPC, must assume parties will execute an asset purchase agreement and an O&M agreement.

PPAs are contracts where IPC purchases all electric power generated by a facility at a set contract price over the term of the agreement. The Bidder is responsible for permitting, design, development, engineering, procurement, construction, interconnection, and all related costs up to achieving the to-be-agreed upon commercial operation date. The Bidder will maintain ownership, operation, fuel supply requirements, if applicable, and compliance of the facility through the contract term. All environmental attributes associated with the electric generation will be for the benefit of IPC.

A BSA is similar to a "rental" agreement where IPC pays a fee to the Bidder over the term of the agreement in exchange for the production and power generation to the benefit of IPC. The Bidder is responsible for permitting, design, development, engineering, procurement, construction, interconnection, and all related costs up to achieving the to-be-agreed upon commercial operation date. After commercial operation, the Bidder maintains ownership of the facility and is responsible for maintenance and compliance through the contract term. IPC will provide the energy to charge a storage facility in exchange for full dispatch control and ownership of the power generated. All environmental attributes associated with the electric generation will be for the benefit of IPC.

Beginning at execution of the applicable agreement, the Bidder will be required to post cash collateral or a letter of credit in the amounts specified in the applicable agreement and commensurate with the purchase price or contract value (e.g., 10–20% of purchase price during the construction and post-construction period under a BTA).

4.4. INTERCONNECTION STUDIES AND COST ESTIMATING

The Bidder is responsible for understanding the IPC Generator Interconnection Processes or other Transmission Providers — including surplus interconnection service — considering the durations and costs of those processes in its bids, and successfully executing those processes to achieve coordination with IPC and delivery of the proposed resources to IPC on or before the dates identified in its bid. A Bidder proposing to interconnect a resource on to IPC's system must demonstrate it has submitted a Generator Interconnection (GI) request and meets the requirements of the GI request process, and all known incremental costs to deliver energy from the resource to IPC's load have been included in the bid. Similarly, a Bidder proposing to interconnect to another Transmission Provider's system must demonstrate it has submitted a GI request and any required transmission service request(s) to the relevant Transmission Providers and that it is meeting the requirements of those processes.

The Transmission Provider function within IPC, separate and apart from the Evaluation Team, performs studies for GI application requests. The studies are performed to determine the feasibility, cost, time to construct, and injection capability for the interconnection of an electric generating resource. Information concerning GIs can be found on IPC's website at Generator Interconnection — Idaho Power, including information on *Public Utility Regulatory Policies Act of 1978* (PURPA) Qualifying Facility (QF) interconnections, Non-PURPA GIs, and Facility Connection Requirements. IPC posts the results of these studies on its OASIS website.

Bidders must provide the GI request identifier(s) (the queue position) associated with its resource in its bid. If the resource identified in the bid was in the queue but has since withdrawn, the Bidder should provide that queue position even though it is no longer active.

The interconnection facility types are specified below.

Interconnection Facilities

- Interconnection Customer's Interconnection Facilities (ICIF) are all facilities and equipment (including the generation tie line) located between the resource and the Point of Change of Ownership. Bidder must submit resource-specific cost estimates of ICIF as part of its bid and consider the cost of ICIF in its pricing.
- Transmission Provider Interconnection Facilities (TPIF) connect the Interconnection Customer's Interconnection Facilities to the Transmission Provider transmission system and facilitate the metering, relaying and communications, etc. TPIF are all facilities owned, controlled, or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection. These are facilities that the Transmission Provider will own, and the Bidder will fund. The Bidder must submit resource-specific cost estimates of TPIF as part of its bid and consider the cost of TPIF in its pricing. In the absence of an estimate, IPC will develop an estimate based on available information. If an interconnection study has been performed by the Transmission Provider that includes an estimate of TPIF, then the costs from that study should be used.

Network Upgrades

- Station Network Upgrades (SNU) are either new switchyards or additions to existing switchyards or substations built to interconnect the generator to the IPC transmission or distribution system. SNUs become a component of the integrated IPC transmission or distribution system and are incorporated into IPC tariffs. Bidders are required to provide cost estimates of SNUs.

- Delivery Network Upgrades (DNU) are upgrades to IPC's transmission or distribution network that will be required for individual resources and groups of resources. DNUs become a component of the integrated IPC transmission or distribution system and are incorporated into IPC tariffs. Bidders are required to provide cost estimates of DNUs.

Based on information available from the GI request and/or studies and estimates performed by the Transmission Provider(s), separate and apart from the Evaluation Team (if available), the Evaluation Team will determine bid-specific SNUs and DNUs and associated reimbursable costs to include in the evaluation of a bid. The Evaluation Team's development of bid-specific SNUs/DNUs does not take the place of the IPC Open Access Transmission Tariff (OATT) GI and transmission studies and does not remove the Bidder's obligation to submit GI or transmission requests to the Transmission Provider(s).

With respect to transmission service, for resources that will be owned in full or in part by IPC or for which IPC will have an executed contract for the purchase of the generation, IPC anticipates it will designate the resource or executed contract as Network Resources of IPC under the OATT upon commercial operation of the resource or first delivery date under the contract. Projects that are seeking to interconnect to IPC's system must have submitted a GI request.

4.5. BID SUBMISSION PROCESS

The Bid Package is considered the aggregate of the information provided by a Bidder and will include data entered into forms on the Portal, data uploaded to the Portal by the Bidder, including other

written documents that are uploaded to the Portal (Information). The Portal is designed to accept most of the Information as data entered into the forms with data entry restricted to only certain eligible types and values. This ensures Information is entered consistently across all Bidders and bids so IPC can consistently, fairly, and quickly organize the Information, evaluate the bids, and minimize the amount of written (e.g., PDF, .docx) documents that IPC must review and interpret.

i Bid Definition Form and Selectable Portfolio

Any potential Bidder interested in participating in the RFP must first register in the Portal. Once registered, the bid submission process begins with completion and submission to IPC of an Exhibit A – Bid Definition Form (BDF) located in the Portal for each bid that a Bidder intends to submit. The BDF includes preliminary information about the bid(s) and associated resources including a narrative description and basic bid parameters.

Within the BDF, a Bidder may identify bids that include two or more resources, that if executed by IPC together, may result in a lower total price or greater benefit to IPC than if the resources were not transacted on together (Selectable Portfolio). An example of a Selectable Portfolio is a solar resource, wind resource, and a storage resource where the Bidder would not offer or contract any one of the individual components, but rather all three are contingent. Another example is a 100 MW solar PPA bid and a 100 MW solar asset purchase bid from a 200 MW solar project. If a Bidder desires to combine, or make contingent, multiple bids of various structure, ownership, term, or resource types, then the Bidder will indicate within the BDF the combination of bids that make a Selectable Portfolio. A Selectable Portfolio will be evaluated as a complete bid such that if it were selected, the entire Selectable Portfolio would be reviewed for further evaluation. Only the submitted bids will be evaluated throughout the RFP and it is the Bidder's responsibility to detail the parameters of such. IPC will not accept additional "options" after the bid due date and during the evaluation.

ii Bid Entry Form

IPC will review the submitted BDF and subsequently respond to the Bidder with an Exhibit B – Bid Entry Form (BEF) that is relevant to the bid(s), including a unique "Bid ID" number for reference. The BEF requests complete technical, commercial, financial, and pricing Information for purposes of subsequent bid evaluation. IPC will provide each Bidder with Bid Fee instructions to accompany the BEF.

iii Forecasted Hourly Renewable Output

In addition to the BEF, IPC will provide Exhibit K — Forecasted Hourly Renewable Output that is relevant to the bid(s). The Forecasted Hourly Renewable Output will provide the format for the hourly forecasted P90 and P50 energy production profiles of any proposed intermittent renewable resources. Failure to provide this exhibit may result in disqualification of the bid.

iv Bid Submittal

Bidders will submit the BEF, Forecasted Hourly Renewable Output, and ancillary Information as defined in the RFP to the Portal. The BEF requires certain cost data as inputs to the price score model. Any bids that are incomplete or do not meet the minimum requirements will be deemed ineligible and removed from further evaluation.

Bidders are strongly advised to carefully review all exhibits relevant to their bids prior to uploading a Bid Package to the Portal. If and when a Bidder is selected for negotiation of an agreement, IPC will use the Information submitted in the Bid Package to populate the relevant portions of the agreements for that Bidder.

4.6. EVALUATION FEES

A Resource-Based Proposal Bidder is required to submit to IPC a non-refundable fee with each bid submitted (Evaluation Fee). The purpose of the Evaluation Fee is to encourage submission of well-developed and viable bids and to offset the cost to IPC for evaluation of bids. For each bid submitted, the Bidder may submit a sub-bid at a reduced Evaluation Fee as described below. Bidders must use the following guidance for the purpose of determining and submitting the Evaluation Fees, due with each bid and sub-bid.

Bid	Fee	Example
A single site and resource type (can include multiple structures, terms, and price)	$10,032	Site Alpha, 200 MW Solar PV, PPA, 35-year *and* Site Alpha, 200 MW Solar PV, Asset Purchase
Same site and resource type but different capacity or initial delivery year	+$5,016	Site Alpha, 400 MW Solar PV, Asset Purchase
Different site = different bid	$10,032	Site Bravo, 150 MW BESS, 20-year, BSA
Different resource = different bid **unless** the different resource is part of, and required, as part of the Selectable Portfolio	$10,032	Site Alpha, 300 MW Wind, Asset Purchase (different bid = $10,032) *or* Site Alpha, 300 MW Wind, Asset Purchase contingent on Site Alpha, 200 MW Solar PV, PPA, 35-year as a Selectable Resource only (not a different bid)

IPC may deem a bid that does not satisfy the requirements for a single bid as multiple bids, each of which would require a separate Evaluation Fee. If IPC deems a Bidder's bid to be multiple bids, IPC will notify the Bidder and allow the Bidder to elect to pay the incremental Evaluation Fee or to revise its bid to comply with IPC's requirements for a single bid.

4.7. EXCEPTIONS TO THE DRAFT FORM AGREEMENTS

Bidders must provide bids and pricing that are consistent and compliant with Exhibit F – Draft Form Agreements and Term Sheets for Resource Based Proposals. To the extent that the validity of a Bidder's bid and/or the Bidder's ability to execute an agreement is contingent upon material changes to the language in the draft form agreements, the Bidder should specifically identify the terms they propose to change in the form of a redline markup or issues list and submit the revisions with its bid. To the extent that a Bidder wishes to propose changes to the draft form agreements that, if accepted by IPC, would reduce the Bidder's proposed pricing the proposed changes should specifically identify in the redline or issues list, such changes and the associated price reduction. To the extent practicable,

Bidders should develop exhibits, schedules, attachments, and other supplemental documents required by the draft form agreements in the redline. Bidders proposing to sell existing generation facilities should propose in the redline changes to the draft form agreements for the proposed resource type reflecting the terms and conditions on which their bid is based. Note that not every technology and contract structure is presented in the draft form agreements and, thus, proposed contracts and terms should be provided for contracts that are substantively different to the provided draft form agreements. For a Wind PPA, Bidders should review and redline the substance of the Exhibit F – Power Purchase Agreement commercial terms with the inclusion of the Exhibit F – Wind Performance Guarantees.

The proposed changes must be specific and include a detailed explanation and supporting rationale for each. General comments, drafting notes and footnotes, such as "parties to discuss" will be disregarded and not negotiated. Exceptions to the draft form agreements requested by a Bidder will be reviewed as part of IPC's qualitative evaluation of the bid.

4.8. EXCEPTIONS TO THE DRAFT FORM LETTER OF CREDIT

Bidders who propose a resource for IPC ownership must provide bids and pricing consistent and compliant with the Exhibit I – Draft Form Letter of Credit and commensurate with the purchase price (10–20% of purchase price during the construction and post-construction period). To the extent the validity of a Bidder's bid and/or the Bidder's ability to execute an agreement is contingent upon material changes to the language in the draft form letter of credit, the Bidder should specifically identify the terms they propose to change in the form of a redline markup to Exhibit I – Draft Form Letter of Credit, and submit the redline with its bid. To the extent a Bidder wishes to propose changes to the draft form letter of credit that, if accepted by IPC, would reduce the Bidder's proposed pricing for the bid, should specifically identify in the redline such changes and the associated price reduction.

The proposed changes must be specific and include a detailed explanation and supporting rationale for each. General comments, drafting notes, and footnotes, such as "parties to discuss," will be disregarded and not negotiated. Exceptions requested by a Bidder will be reviewed as part of IPC's qualitative evaluation of the bid.

4.9. TECHNICAL SPECIFICATIONS

Bidders proposing an asset purchase or BTA must provide bids and pricing that are consistent and compliant with applicable technical specifications standard to the technology bid. Bidders should submit technical specifications for review by IPC with their bid for evaluation. To the extent the validity of a Bidder's bid and/or the Bidder's ability to execute an agreement is contingent upon substantive language in applicable technical specifications, the Bidder must specifically identify the key aspects of the specifications that have material or substantive price impacts.

5. Market Purchase Proposals: Additional Specifications and Instructions

5.1. MINIMUM REQUIREMENTS

IPC has specified the Minimum Requirements for Market Purchase Proposals. These requirements are listed in Exhibit C – Bid Eligibility Checklist. Non-conforming bids will be removed from further evaluation.

5.2. AGREEMENT TYPES

IPC will consider bids for agreements consisting of confirmations under mutually agreeable master agreements (i.e., WSPP or other), or mutually agreeable standalone agreements.

5.3. BID ATTRIBUTES

Additional description of the volumes and bid attributes IPC seeks are listed in Exhibit E – Transmission Paths and Delivery Points. IPC anticipates it will designate the resource or executed contract as Network Resources of IPC under the OATT upon commercial operation of the resource or first delivery date under the contract.

5.4. BID SUBMISSION PROCESS

The Bid Package is considered the aggregate of the information provided by a Bidder and will include data entered into forms on the Portal, data uploaded to the Portal by the Bidder, including other written documents uploaded to the Portal (Information). The Portal is designed to accept most of the Information as data entered into the forms with data entry restricted to only certain eligible types and values. This ensures Information is entered consistently across all Bidders and bids so IPC can consistently, fairly, and quickly organize the Information, evaluate the bids, and minimize the amount of written (e.g., PDF, .docx) documents that IPC must review and interpret.

i Bid Definition Form

Any potential Bidder interested in participating in the RFP must first register in the Portal. Once registered, the bid submission process begins with completion and submission to IPC of an Exhibit A – Bid Definition Form (BDF) located in the Portal for each bid that a Bidder intends to submit. The BDF requests preliminary information about the bid(s) including a narrative description and basic bid parameters.

ii Bid Entry Form

IPC will review the submitted BDF and subsequently respond to the Bidder with an Exhibit B – Bid Entry Form (BEF) that is relevant to the bid(s), including a unique "Bid ID" number for reference. The BEF requests complete technical, commercial, financial, and pricing Information for purposes of subsequent bid evaluation. IPC will provide each Bidder with Bid Fee instructions to accompany the BEF.

iii Bid Submittal

Bidders will submit the BEF and ancillary Information as defined in the RFP to the Portal. The BEF requires certain cost data as inputs to the price score model. Any bids that are

incomplete or do not meet the minimum requirements will be deemed ineligible and removed from further evaluation.

Bidders are strongly advised to carefully review all exhibits relevant to their bid(s) prior to uploading their Bid Package to the Portal. If and when a Bidder is selected for negotiation of an agreement, IPC will utilize the Information submitted within the Bid Package to populate the relevant portions of the agreements for that Bidder.

6. Additional Requirements for All Bid Packages

6.1. CONTENTS OF WRITTEN BID PROPOSAL

A Bidder **MUST** prepare and submit as part of the bid a written narrative that fully describes the bid and any details or nuances to fully explain the intent of the Bidder and the BEF. The narrative should include a **cover letter and introduction, company and project overview, a description of each bid submitted in the BEF including substantive assumptions, responses to bid eligibility and non-price factors, and project financing and contract terms** according to Exhibit N – Bid Format and Requirements.

6.2. BID NAMING

A unique name for each proposal (Bid ID) will be provided to the Bidder and must thereafter be used by the Bidder when referring to the bid and must be inserted into the file name of each document for the bid uploaded by the Bidder. The purpose of the Bid ID is to allow IPC to more easily identify and differentiate among bids and documents.

6.3. BID WRITTEN DOCUMENTS

Written documents must be text-searchable PDF (portable document format, non-zipped) and must contain documents reproduced directly from the native document (i.e., Word, Excel, MicroStation, AutoCAD). Scanned images and documents will be considered irregular and may be rejected.

6.4. RFP EXHIBITS REQUIREMENTS

Exhibits to this RFP summarize the Information that must be included within the Bid Packages and uploaded by Bidders to the Portal. Bidders are directed to the individual forms in the Portal to ensure review of all the current information and the specific type and level of detail that must be provided is understood and are summarized below. Table 6-1 includes the required exhibits that must be completed depending on the type of contract offered.

Table 6-1. Bid Package Requirements

Exhibit	Asset Purchase	PPA/BSA	Market Purchase
Proposal Narrative consistent with Exhibit N – Bid Format and Requirements	X	X	X
Exhibit B/C/D – Bid Entry Form	X	X	X
Redlines/Issues List to Exhibit F – Draft Form Agreements and Term Sheets for Resource-Based Proposals	X	X	
Exhibit H – Counterparty Financial Questionnaire	X	X	X
Redlines to Exhibit I – Draft Form Letter of Credit	X	X	
Exhibit K – Forecasted Hourly Renewable Output, if applicable	X	X	
Exhibit L – Cyber Security Questionnaire	X	X	
Exhibit M – Gas-Fired Resource – Fuel Questionnaire, if applicable	X	X	

6.5. FIRM BID

Each bid shall be firm, not subject to price escalation, and binding throughout the schedule of this RFP from the date the bids are due under this RFP. The bid must include all assumptions that influence the price and validity of the bid, including, but not limited to tariffs and tax credits. IPC understands that future changes in legislation and law could impact the validity of a bid. If a substantive change to legislation, law, or similar has a material impact to the submitted pricing proposal, IPC will seek updates from all Bidders, as applicable, throughout the evaluation process.

6.6. TAXES

Bidders are responsible for the payment of all sales, conveyance, transfer, excise, real estate transfer, business and occupation, and similar taxes assessed with respect to or imposed on either party in connection with a proposed agreement.

6.7. DATA AND CYBER SECURITY

A bid must comply with the provisions of Presidential Executive Order 13920 (E.O. 13920) issued May 1, 2020, titled *Securing the United States Bulk-Power System* (BPS), which (among other things) prohibits any acquisition, importation, transfer or installation of BPS electric equipment by any person or with respect to any property to which a foreign adversary or an associated national thereof has any interest that poses an undue risk to the BPS, the security or resiliency of United States (U.S.) critical infrastructure or the U.S. economy, or U.S. national security.

All design and implementation details must follow electrical industry best practices for cyber security as well as all applicable regulatory requirements pertaining to the security of electric system assets. Any additional IPC-specific requirements will be addressed during the RFP review and contracting

process, pursuant to Exhibit G – Mutual Non-Disclosure Agreement. Bidder must state that any and all equipment utilized in the proposed resource will not be procured through an Office of Foreign Assets Control (OFAC) designated entity or otherwise be comprised of equipment prohibited for use by electric utilities in the U.S.

Bidder must provide a written response and associated documents in response to Exhibit L – Cyber Security Questionnaire of this RFP.

6.8. PROHIBITED TECHNOLOGY AND TRADE SANCTIONS

Pursuant to Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and Federal Acquisition Regulation (FAR) 52.204-25 (Aug. 2020), Bidder agrees, represents, and warrants that Contractor shall not supply or deliver to Owner any "covered telecommunications equipment or services" as a substantial or essential component of any system or critical technology of any system. As defined in FAR 52.204-25(a), "covered telecommunications equipment or services" includes equipment, systems, products, or services made by any of the following companies, or any subsidiary or Affiliate thereof (including companies with the same principal word in the name, e.g., "Huawei" or "Hytera"): Huawei Technologies Company; ZTE Corporation; Hytera Communications Corporation; Hangzhou Hikvision Digital Technology Company; or Dahua Technology Company. "Covered telecommunications equipment or services" may include, but are not limited to, video/monitoring surveillance equipment/services, public switching and transmission equipment, private switches, cables, local area networks, modems, mobile phones, wireless devices, landline telephones, laptops, desktop computers, answering machines, teleprinters, fax machines, and routers. "Covered telecommunications equipment or services" do not include telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that the equipment transmits or handles.

To the extent that the systems, products, or services to be provided by Bidder under this Agreement may be procured by Owner in support of or to satisfy Owner's obligations under agreements with a federal governmental entity, Bidder further agrees that FAR 52.204-25 (Aug. 2020), except for paragraph (b)(2) thereof, shall be incorporated by reference into this Agreement and is binding on Bidder, and that Bidder does not use any equipment, system, or service that uses covered telecommunications equipment or services and will not supply any covered telecommunications equipment or services to IPC. Bidder further agrees that, if it identifies covered telecommunications equipment or services used as a substantial or essential component of any system or as critical technology as part of any system during contract performance, or Bidder is notified of such by a Subcontractor at any tier or any other source, Bidder shall immediately notify IPC and reasonably cooperate with IPC's requests for information.

Bidder shall not in performance of the work use or allow use of, nor directly or indirectly import or supply to IPC as part of the work, any products, systems, equipment, materials, supplies, or related software or technology from (whether directly or indirectly): (a) any individual, entity, region or country prohibited by Trade Control and Sanctions Laws, including the prohibition against imports (i) from a national or resident of, any country subject to U.S. comprehensive sanctions or similar export restrictions (e.g., Cuba, Iran, Syria, North Korea and the Donetsk, Luhansk and Crimea regions of Ukraine); or (ii) anyone on the U.S. Treasury Department's list of Specially Designated Nationals, Sectoral Sanctions Identifications List or Foreign Sanctions Evader's list, the U.S. Department of

Commerce's Denied Persons List, Unverified List or Entity List, or other export / import control lists; or (b) for any purpose prohibited by Trade Control and Sanctions Laws.

Notwithstanding any consent of IPC given pursuant to Section 3.23.1, under no circumstances shall Bidder use any Chinese manufactured unmanned aerial vehicles (drones), including but not limited to those manufactured by Shenzhen DJI Sciences and Technologies Ltd. or Autel Robotics, in the performance of this Agreement.

6.9. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS PROGRAM

IPC is committed to the implementation of a Small and Disadvantaged Business Program. It is the intent of IPC that small business concerns and small businesses owned and controlled by socially and economically disadvantaged individuals have the opportunity to participate in the performance of contracts awarded by IPC. Consequently, IPC requests that Bidders indicate their eligibility as a small business based upon the regulations in Title 13, Code of Federal Regulations, Part 121. If in doubt, Bidders should consult the Small Business Administration Office in their area.

6.10. INSURANCE

Bidder is directed to the Exhibit F – Draft Form Agreements for Resource Based Proposals for details concerning insurance requirements that must be met.

6.11. FINANCIAL AND CREDIT INFORMATION

Bidder must provide a written response and associated documents in response to the Counterparty Financial Questionnaire. Details are further described in Exhibit H – Counterparty Financial Questionnaire of this RFP.

6.12. CLARIFICATION OF BIDS

While evaluating a bid, IPC may request clarification or additional information from the Bidder about any item in its bid. Such requests will be sent via the Portal or via email by IPC and the Bidder must provide a response back, respectively, to IPC within five (5) business days, or IPC may deem the Bidder to be non-responsive and either suspend or terminate further evaluation of its bid. Bidders are encouraged to provide an alternate point of contact to ensure a timely response to clarification requests.

6.13. ADDENDA TO RFP

Any additional responses required from Bidders as a result of an addendum to this RFP shall become part of each bid. Bidders must acknowledge receipt of and list all addenda where indicated in the BEF.

7. Bid Evaluation, Negotiation and Approval

7.1. THE EVALUATION PROCESS

The bid evaluation and selection process are designed to identify the combination and size of proposed resources that will maximize customer benefits and will satisfy projected resource capacity and energy needs while maintaining reliability. The portfolio optimization models used to identify the

proposed resources are the same that IPC uses to evaluate proxy resources in the 2025 IRP (and subsequent IRPs). IRP portfolio optimization process details can be found in IPC's 2025 IRP Sections 9 and 10.

IPC will separate and prioritize bids that can meet 2031 needs separately from those that meet 2032 needs. Bids that can meet 2031 needs, but that are not selected for the Final Shortlist to meet 2031 needs specifically, will automatically be considered in the evaluation of bids to meet 2032 needs. The Selection Plan, or bid evaluation process, is described below.

7.2. PHASE 1 – INITIAL SHORTLIST

Phase 1 of the bid evaluation process includes the screening, evaluation, and ranking of the bids, including the IPC Internal Bids, to identify a subset that can be advanced for further evaluation (the Initial Shortlist). This includes: 1) bid eligibility screening to ensure conformance with the Minimum Requirements; 2) price and non-price evaluation to score and rank bids; and 3) identification of the bids for inclusion in the Initial Shortlist. The bids will be categorized by the commercial operation date.

IPC will rely on the Information provided within the Bid Package to screen, evaluate, and rank bids. During this phase of the bid evaluation process, IPC does not anticipate asking for, nor accepting, updated pricing or updates to any other bid components (with the exception of updates identified in Section 6.5). However, IPC may contact Bidders to confirm and clarify information presented in each bid if necessary.

Additionally, if at any time during Phase 1, a Bidder determines its submitted bid is no longer valid, the Bidder should notify IPC immediately and the bid will be withdrawn from further consideration.

Conformance to Minimum Requirements

Bids will initially be screened against the Minimum Requirements using Exhibit C – Bid Eligibility Checklist. Bidders of non-conforming bids will be notified and the bid will be removed from consideration.

Price and Non-Price Scoring, Ranking, and Initial Shortlist

Resource Based Proposals Non-Price Score (up to 100 points)

The non-price evaluation rubric for Resource Based Proposals is included in Exhibit D – Non-Price Scoring Sheet. IPC's non-price scoring model evaluates whether bids are thorough and comprehensive, whether the proposed resource is viable, and whether the Bidder is likely to achieve commercial operation by the proposed date. Bidders must provide documentation, representation, warranties, and other information as necessary to sufficiently assure IPC that any proposed project will complete construction and achieve full commercial operation by the defined commercial operation date. The non-price rubric is designed to be objective, intuitive, and self-scoring. Bidders are required to score themselves by answering each of the non-price questions and providing supporting documentation. The non-price questions are utilized to score and rank bids based on, among other factors, the completeness of the Bid Package and adherence to the bid requirements, the ability to contract with the project, the maturity of the project including site control, permitting, generator interconnection status, and development progress and schedule, and the ability to deliver the project by the commercial operation deadline.

If a Bidder is unable to demonstrate commercial viability, in IPC's sole discretion — specifically the ability to meet the applicable in-service date — they will be removed from further evaluation. Each question is weighted differently with a focus on current progress of the project. Weightings are outlined in Exhibit D – Non-Price Scoring Sheet. The maximum score possible for non-price questions is 100 points.

Resource Based Proposal Price Evaluation

IPC's proprietary price scoring model will calculate the delivered revenue requirement per kilowatt cost of each bid, inclusive of any applicable carrying cost and the impact of tax credit benefits, as applicable. In developing the revenue requirement cost for each bid, IPC requires certain cost data as inputs to the price score model. IPC will convert Bidder provided cost inputs into a revenue requirement stream based on Generally Accepted Accounting Principles (GAAP) and develop annual levelized costs as described in Exhibit J – Levelized PVRR Scenarios. Contract structures in which IPC is not the owner of the project bring added costs beyond the direct contract costs in the form of imputed debt. Any internal assumptions for key financial inputs (i.e., inflation rates, discount rates, marginal tax rates, asset lives, allowance for funds used during construction [AFUDC] rates, etc.) and IPC's carrying costs (i.e., integration costs, owner's costs, etc.) will be applied consistently to all bids, as applicable.

As stated under Interconnection Studies above, Bidders must provide known costs for interconnection costs and transmission network upgrade costs as provided in applicable system impact study reports or LGIAs. If this information is not available, IPC will model the bids with an anticipated cost based on the location of the interconnection point. IPC will model bids with other uncertain terms and anticipated cost or price contingencies as applicable.

IPC's proprietary price scoring model ranks each bid relative to each other within the same technology where feasible.

Market Purchase Proposals Non-Price Score (up to 100 points)

The non-price evaluation rubric for Market Purchase Proposals is included in Exhibit D – Non-Price Scoring Sheet. IPC's non-price scoring model evaluates whether bids are thorough and comprehensive and meet the requested attributes as described in Exhibit E – Transmission Paths and Delivery Points. Bidders must provide documentation, representation, warranties, and other information as necessary to sufficiently assure IPC that any bid will meet the requirements. The non-price rubric is designed to be objective, intuitive, and self-scoring. Bidders are required to score themselves by answering each of the non-price questions and providing supporting documentation. The non-price questions are utilized to score and rank bids based on, among other factors, the completeness of the Bid Package and adherence to the bid requirements and the ability to meet the requested attributes described in Exhibit E – Transmission Paths and Delivery Points.

Points are earned based on the ability to meet each of the bid attributes requested. If a bid offers attributes that could require IPC to incur additional costs (i.e., a bid of a WSPP Schedule B product could require IPC to incur additional Point-to-Point transmission costs), those costs will be estimated and included in the pricing analysis. Each question is weighted differently with a focus on product type, contribution to identified needs, shaping and flexibility options, WRAP eligibility, point of delivery, and pricing structure. The maximum score possible based on pre-determined weightings is 100 points.

Final Ranking and Identification of the Initial Shortlist

Through the application of qualitative and quantitative considerations, the proposals in Phase I will be assigned a proposal ranking and a recommended disposition. The comprehensive set of the highest ranking and relatively lowest cost bids that combined meet the requirements of the RFP will become the Initial Shortlist.

IPC will notify the Bidders, through the Portal or email, that were selected for the Phase 1 – Initial Shortlist. This initial pool of bids will be made available as alternatives for further modeling.

7.3. PHASE 2 – FINAL SHORTLIST

Phase 2 of the evaluation process is the selection of the Final Shortlist, the projects IPC is most likely to commence contract negotiations. IRP modeling tools will be utilized to help select the least-cost, least-risk portfolios from the Initial Shortlist based on bid cost, performance data, and effective load carrying capability (ELCC).

IPC will perform a reliability assessment to ensure that the selected portfolio of resources can meet all hourly load and operating reserve requirements with sufficient cushion to account for other system uncertainties such as non-normal weather events. This process is described in IPC's 2025 IRP Appendix D: System Reliability and Regulating Reserves.

IPC does not anticipate updating the bid evaluation from Phase 1. However, if at any time during Phase 2, a Bidder determines its submitted bid is no longer valid, the Bidder should notify IPC immediately and the bid will be withdrawn from further consideration. Any other factors not expressly included in the formal evaluation process but required by applicable law, order by the Commissions, or other significant material industry or technology change may be used by IPC to identify a subset of Bidders from Phase 1 that can be advanced to further evaluation and negotiation (the Final Shortlist).

IRP Modeling, Sensitivity Analysis and Portfolio Development

Consistent with the treatment of the capital revenue requirement in IPC's IRP modeling, IPC will convert any calculated revenue requirement associated with capital costs (i.e., return on investment, and taxes, and the impact of tax credits, as applicable) to first year-real-levelized costs. Similarly, all other bid costs are levelized and formatted for input into the IRP models. For a 25-year PPA for example, IPC calculates the present value of the revenue requirement (contractual payment stream over the 25 years) for the project and calculates the levelized payment based on the contract life as demonstrated in the example Exhibit J – Levelized PVRR Scenarios. Projected renewable resource performance data (expected hourly capacity factor information) will also be processed for input into the IRP models. Projected ELCC for each bid will also be processed for input into the IRP models. The IRP modeling tools will help select the least cost resource types based on bid cost, performance data, and ELCC. IPC's Final Shortlist may include bids in excess of the identified capacity limits if those projects have economic benefit.

IPC will evaluate portfolios under a range of different environmental policy and market price scenarios (policy-price scenarios). In this way, IPC uses Aurora to help optimize its selection of bid resources to identify the lowest cost, reliable portfolio under multiple scenarios prior to undergoing additional risk analysis and further consideration as part of the Final Shortlist process.

Risk Analysis

IPC next uses Aurora to evaluate each portfolio and its ability to perform under dynamic market conditions. In Aurora a stochastic sensitivity analysis will be performed, which assesses the effect on portfolio costs when select variables take on values different from their planning-case levels. Aurora measures the risk of each portfolio through its production cost estimates. By holding a resource portfolio fixed and using Latin Hypercube stochastic simulations of stochastic variables — including, for example, load, natural gas prices, and hydro generation — Aurora can measure the expected cost of each portfolio in an uncertain future. Stochastic variables are selected based on the degree to which there is uncertainty regarding their forecasts and the degree to which they can affect the analysis results (i.e., portfolio costs). The Latin Hypercube design samples the distribution range with a relatively small sample size, allowing a reduction in simulation run times. The Latin Hypercube method does this by sampling at regular intervals across the distribution spectrum. The purpose of the stochastic analysis is to understand the range of portfolio costs across the full extent of stochastic shocks (i.e., across the full set of stochastic iterations) and how the ranges for portfolios differ.

Identification of Top-Performing Resource Portfolios

IPC will then summarize and analyze the portfolios to identify the specific bid resources that are most consistently selected among the policy-price scenarios. Based on this data, as well as certain qualitative and non-price criteria, IPC may select one or more resource portfolios for further cost-risk analysis.

Other Factors – Applicable Law and Statutory Requirements

Before establishing a Final Shortlist, IPC may take into consideration, other factors that are not expressly or adequately factored into the evaluation process outlined above, particularly any factor required by applicable law or order of either Commission to be considered.

Final Shortlist Selection

IPC will summarize and evaluate the results of its cost-risk analysis, considering present value revenue requirement results to identify the specific least-cost, least-risk bids. Based on these data and certain other factors as described above, IPC will establish a Final Shortlist. After the Final Shortlist is established, IPC may engage in negotiations with the selected Bidder(s). Selection of a bid to the Final Shortlist does not constitute a winning bid. Only execution of a definitive agreement between IPC and the Bidder, on terms acceptable to IPC, in its sole and absolute discretion, will constitute a winning bid.

7.4. ADDITIONAL RIGHTS

IPC may, at any time during the Solicitation:

1. Appoint evaluation committees to review bids, seek the assistance of outside technical experts and consultants in bid evaluation, and seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
2. Revise and modify the factors it will consider in evaluating bids and to otherwise revise or expand its evaluation methodology as applicable and relevant.

3. Hold interviews and meetings to conduct discussions and exchange correspondence with either all Bidders or only those with bids that IPC elects to select for detailed discussions to seek an improved understanding and evaluation of an individual Bidder's bid.
4. Issue a new RFP.
5. Cancel or withdraw the entire RFP or any part thereof.

7.5. ACCEPTANCE AND REJECTION OF BIDS

IPC may or may not award an agreement after analysis and evaluation of the bids. IPC reserves the right to reject any and all bids, to waive minor formalities and irregularities, and to evaluate the bids to determine which — in IPC's sole judgment — represents the best value for the bids requested.

7.6. AGREEMENT NEGOTIATIONS

In anticipation of an award, there may be a period of negotiations to finalize the agreement(s) between the parties. An agreement, including all terms, conditions, exhibits and attachments, must be executed by both IPC and the successful Bidder in order to create a binding enforceable agreement between IPC and the successful Bidder.

7.7. EXCLUSIVITY

If and when a bid is selected for the Final Shortlist, from that date, the Bidder and/or its affiliates shall not execute an agreement with any other party for the sale of the Project or Plant so the Bidder would no longer be able to provide the associated bid for a period of 90 days.

7.8. PUBLICITY

The parties intend to issue joint public announcements, in the form of press releases, case studies, and/or other materials, containing content mutually agreed to by the parties, upon execution of the agreements. Neither party shall use the name, logo, or any other indicia of the other party in any public statement, press release, other public relations, or marketing materials, the identity of the other party or any underlying information with respect to the agreement(s) at any time without the prior written consent of the other party, which it may withhold in such other party's sole discretion. Prior to making any such permitted use, each party shall provide for the other party's review and approval, any publicity materials. Any and all goodwill from use of IPC's name, logo, or indicia will inure to IPC's sole and exclusive benefit.

7.9. COMMISSION APPROVAL

Execution of an agreement may ultimately be subject to approval by the IPUC.

8. ENTIRE RFP

This RFP and all exhibits, attachments, datasheets, forms, and addenda within the Portal event are incorporated herein by this reference and represent the final expression of this RFP. Only information supplied by IPC in writing through the parties listed herein or by this reference made in the submittal of this RFP shall be used as the basis for the preparation of Bidders' bids.

Exhibit A - Bid Definition Form (BDF)

2032 All Source Request for Proposals (RFP)

Bidder:

[DATE]

Instructions:

▪ Respondent must fill out all the applicable fields on both [Respondent Information] & [Bid Definition] **sheets**.

▪ On [Bid Definition] sheet, Respondent must fill out the required information for all the candidate proposals under the "Proposal Definition" section; and then fill out the "Bids and Selectable Portfolios" section to define the bids and portfolios to be proposed. (E.g. Facility AA has a Solar Proposal and a BESS Proposal. There may be 3 valid bids or portfilios to be proposed from Facility AA: 1) the Solar Proposal, 2) the BESS Proposal, 3) the Solar + the BESS.)

▪ Definition: PPA - Power Purchase Agreement; BSA - Battery Storage Agreement

Color Code:

Applicable Input: Respondent to Fill
Calculated Input: Autofill, Do not Edit
Non Applicable Input: Do not Edit

Idaho Power Company 2032 All Source RFP
Respondent Information

Respondent Information

	Counterparty	Special Purpose Entity
Legal Entity Name		
Street Address		
City		
State		
Country		
Website		

Business Classification

- ☐ Small Business
- ☐ Small Disadvantaged Business
- ☐ Woman Owned Business
- ☐ HUBZone Small Business
- ☐ Veteran Owned Business
- ☐ Service-Disabled Veteran Owned Business
- ☐ Large Business
- ☐ Other

Contacts

	First Name	Last Name	Title	Phone 1	Phone 2	Email
Authorized Contact #1						
Authorized Contact #2						
Authorized Contact #3						

Owners of Respondent

How many years has your oganization been in business?

How may years has your organization been in business under its present business name?

If applicable, under what other or former name(s) has your organization operated?

	Name	Ownership %	Website URL
Owner 1			
Owner 2			
Owner 3			

Ownership Notes

Idaho Power Company 2032 All Source RFP

Exhibit A - Bid Definition Form

Bidder to fill
Autofill
N/A

Bidder:

Proposal Definition

Facility Name					
Proposal Type	Please Select	Please Select	Please Select	Please Select	Please Select
Resource Number					
Ownership					
Resource Based Proposals					
Resource Type (Resource Based Proposal)					
Provide Resource Type (if "Other")					
Structure					
Contract Term (Years)					
Contract Capacity at POI (MWac)					
Energy Storage Capacity (MWh)					
Market Based Proposals					
Contract Type					
Contract Term (Years)					
Contract Capacity (MWac)					
COD (m/d/yyyy)					
Point of Delivery					
County, State					
Contingent on IPC transmission rights?	Please Select	Please Select	Please Select	Please Select	Please Select
Generation Interconnection Queue #					

Bids and Selectable Portfolios

Please select "Yes" for the proposal(s) to form your bid(s). A bid can be formed with one or multiple proposals at the ***same*** *facility.*

		Facility					
Bid 1		Please Select					
Bid 2		Please Select					
Bid 3		Please Select					
Bid 4		Please Select					
Bid 5		Please Select					
Bid 6		Please Select					
Bid 7		Please Select					
Bid 8		Please Select					
Bid 9		Please Select					
Bid 10		Please Select					
Bid 11		Please Select					
Bid 12		Please Select					
Bid 13		Please Select					
Bid 14		Please Select					
Bid 15		Please Select					
Bid 16		Please Select					
Bid 17		Please Select					
Bid 18		Please Select					
Bid 19		Please Select					
Bid 20		Please Select					

Exhibit B - Bid Entry Form (BEF)

2032 All Source Request for Proposals (RFP)

Bidder:

[DATE]

Instructions:

▪ Bidder Information sheet reflects the information filled out in your Bid Definition form. No further action is needed in this BEF.

▪ Bidders must fill out the applicable fields on **all the blue sheets**. The proposals are listed according to the Bid(s) submitted in your Bid Definition form.

▪ Acronym Definitions:

PPA - Power Purchase Agreement;
BSA - Battery Storage Agreement
BTA - Build Transfer Agreement

▪ Capacity Definitions

Expected Nameplate Capacity @ POI (MWac) - For non-storage resources, the maximum output of the resource accounting for any inverter limitations or limitations at the interconnection point.

Installed Capacity (MWdc) - For non-storage resources, the maximum output of the resource before accounting for any inverter limitations or limitations at the interconnection point.

Interconnection Capacity (MWac) - The amount of capacity requested with the applicable transmission owner for interconnection service of the proposed resource.

Storage Installed Capacity (MWdc) (Power) - The maximum amount of power that a battery can instantaneously produce on a continuous basis, before accounting for any inverter limitations or limitations at the interconnection point.

Storage Installed Capacity (MWhdc) (Energy) - The maximum amount of energy the proposed resource is able to store before accounting for any inverter limitations or limitations at the interconnection point.

Contract Capacity (Power) (MWac) - The maximum amount of power that a battery can instantaneously produce on a continuous basis accounting for inverter limitations or limitations at the interconnection point.

Contract Capacity (Energy (MWhac)) - The maximum amount of energy the proposed resource is able to store after accounting for any inverter limitations or limitations at the interconnection point.

Duration (hours) - The length of time that a battery can be discharged at its Contract Capacity until the battery must be recharged.

Color Code:

Applicable Input: Respondent to Fill
Calculated Input: Autofill, Do not Edit
Non Applicable Input: Do not Edit

BLACK & VEATCH

Idaho Power Company 2032 All Source RFP
Bidder Information

Bidder Information

	Counterparty	Special Purpose Entity
Legal Entity Name		
Street Address		
City		
State		
Country		
Website		

Business Classification

☐ Small Business	☐ Veteran Owned Business
☐ Small Disadvantaged Business	☐ Service-Disabled Veteran Owned Business
☐ Woman Owned Business	☐ Large Business
☐ HUBZone Small Business	☐ Other

Contacts

	First Name	Last Name	Title	Phone 1	Phone 1	Email
Authorized Contact #1						
Authorized Contact #2						
Authorized Contact #3						

Owners of Respondent

How many years has your oganization been in business?

How may years has your organization been in business under its present business name?

If applicable, under what other or former name(s) has your organization operated?

	Name	Ownership %	Website URL
Owner 1			
Owner 2			
Owner 3			

Ownership Notes

Exhibit C - Bid Eligibility Checklist

Idaho Power Company 2032 All Source RFP

Color Code:

Bidder to fill
Autofill

Bidder:

Bid (Portfolio) ID		
Resource ID		
Facility Name		
Resource Type		
Generation Interconnection Queue #		
Structure		
Ownership		
Contract Term (Years)		
Contract Capacity (MWac)		
COD / Contract Start Date		
Existing or New?		
Point of Delivery		
County, State		
Contingent on IPC transmission rights?		

Yes	Minimum criteria met
No	Bid not eligible
	Not applicable

Bid Eligibility Factor

NO.	Bid Eligibility Submittal Completeness - Bidder completed each of the following items accurately and in a manner consistent with the RFP requirements.	Name of Supporting Document(s)	Comments	Response 1	Response 2
1	**Resource Based Proposal** - Bid is submitted on or before the submittal deadline and all applicable forms have been completed and submitted. Bid narrative in accordance with the Bid Format and Requirements (Exhibit N) [Eligibility], [Resource Based Non-Pricing], and the applicable [3rd Party Owned Pricing] and [IPC Asset Purchase Pricing] tabs Redlines/Issues List to Draft Form Agreements/Term Sheets (Exhibit F) Counterparty Financial Questionnaire (Exhibit H) Draft Form Letter of Credit (Exhibit I) Forecasted Hourly Renewable Output, if applicable (Exhibit K) Cyber Security Questionnaire (Exhibit L) Gas-Fired Resources - Fuel Questionnaire, if applicable (Exhibit M)			Please Select	Please Select
2	**Resource Based Proposal** - The Bidder is in the IPC Generator Interconnection Queue and will be delivered to a Point of Delivery on IPC's transmission system OR if the Facility will be interconnected to a third-party transmission system, Bidder has provided documentation that demonstrates it has submitted applicable transmission service requests to the relevant Transmission Provider to establish transmission rights to deliver to IPC point of delivery.			Please Select	Please Select
3	**Resource Based Proposal** - The Bid has established Site Control for the Facility.			Please Select	Please Select
4	**Resource Based Proposal** - Bidder has provided a Development Schedule identifying the timeline and schedule including contract execution, full notice to proceed, and major engineer, procure, and construct milestones to ensure delivery at the proposed commercial operation date. The Development Schedule shall include, in addition to the timeline and major milestones, a description of risks, their influence on the project's critical path, and any mitigation strategies.			Please Select	Please Select
5	**Resource Based Proposal (dispatchable generation only)** - Bid includes IPC's ability to commit, decommit, and dynamically schedule (e.g., automatic generation control ("AGC")) the Facility.			Please Select	Please Select
6	**Resource Based Proposal** - The Bid is for a resource with commercially available technology.			Please Select	Please Select
7	All Proposals must have a First Delivery date of May 31, 2032 or earlier.			Please Select	Please Select

8	Evidence of wire transfer provided prior to bid deadline in the correct amount for the correct number of bids.			Please Select	Please Select
9	Documentation submitted indicates the viability of a Commercial Operation Date (Resource Based Proposals) or Contract Effective Date (Market Purchase Proposals) that supports the COD submitted. Documentation may include, as applicable, GIA status and timely interconnection capability; federal, state, and local permitting requirements and decisions; land-use and site control requirements and decisions; construction plans and schedules; procurement documentation; financing capability and sources; and other relevant documentation necessary to demonstrate timely viability of the project. Documentation may also include a narrative explanation regarding the viability of the Commercial Operation Date or Contract Effective Date. Bidder must provide details of public and community outreach (tactics, audience, goals, etc.) at a local level to identify the viability of a project's success. Idaho Power may utilize local knowledge and experience to gauge relative outreach when scoring. Idaho Power will also consider (and bidder **must** identify) pending, actual, or threatened administrative, legal, legislative, procedural, and other actions (federal, state, or local) that could impact timely viability.			Please Select	Please Select
10	**Market Purchase Proposal** - Bid is submitted on or before the submittal deadline and all applicable forms have been completed and submitted. Bid narrative in accordance with the Bid Format and Requirements (Exhibit N) [Market Purchase Non-Pricing] and [Market Purchase Pricing] tabs Counterparty Financial Questionnaire (Exhibit H)			Please Select	Please Select
11	**Market Purchase Proposal** - Bid of firm energy and capacity (prefer WSPP Agreement Schedule C or equivalent) meeting Western Resource Adequacy Program (WRAP) resource specificity, transmission and other requirements.			Please Select	Please Select
12	**Market Purchase Proposal** - The minimum WRAP Qualified Capacity Contribution requirement is met.			Please Select	Please Select

Exhibits B, C, D - Bid Entry Form (BEF)

Exhibit D - Resourced Based Non-Pricing Scoring Sheet

Idaho Power Company 2032 All Source RFP

Color Code:

Bidder to fill
Autofill

Bidder:

Bid (Portfolio) ID					
Resource ID					
Facility Name					
Resource Type					
Generation Interconnection Queue #					
Structure					
Ownership					
Contract Term (Years)					
Contract Capacity (MWac)					
COD / Contract Start Date					
Existing or New?					
Point of Delivery					
County, State					
Contingent on IPC transmission rights?					
Total Non-Pricing Score	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**

Proposal / Project Information (not for scoring)

Proposal / Project Information	Response 1	Response 2	Response 3	Response 4	Response 5
Project Street Address					
Project City					
Project State					
Project Zip					
Project Elevation					
Project Latitude					
Project Longitude					
Interconnection Request Number (if available)					

Non-Price Factor

NO.	Non-Price Factor (Weighting %)		Name of Supporting Document(s)	Comments	Response 1	Response 2	Response 3	Response 4	Response 5
1	**Contract Risk (5%)** Bidder represents that Bidder has reviewed the Draft Form Agreements/Term Sheets, provided Technical Specifications if applicable, and Draft Form Letter of Credit and that Bidder's firm bid takes into account the terms of these documents or the terms of these documents as redlined and submitted with Bidder's firm bid (i.e. – product, price, term, performance guarantees, delay damages, milestone payments, etc.).	***Red*** *- No, not confirmed* ***Green*** *- Yes, confirmed*			Please Select	Please Select	Please Select	Please Select	Please Select
2	**Site Control (10%)** Bidder must provide sufficient documentation that it will have site control, site access, easements, and meet zoning conditions to support the project development schedule, for all land (including private, state, and federal) up to the point of interconnection by contract execution date.	***Red*** *- Documentation (or lack thereof) indicates that Bidder has not sufficiently engaged with the appropriate owners and agencies to establish site control.* ***Yellow*** *- Documentation indicates that Bidder has identified a site and has demonstrated progress with owners and agencies.* ***Green*** *- Documentation indicates that all applicable site control is established.*			Please Select	Please Select	Please Select	Please Select	Please Select
3	**Permits (10%)** Bidder must provide sufficient documentation, including due diligence that applicable federal, state, and local permits for the site and ancillary facilities will be complete by the planned date, which supports the project development schedule and target commercial operation date.	***Red*** *- Documentation (or lack thereof) indicates that Bidder has not sufficiently engaged with the appropriate agencies or conducted due diligence or the results of environmental studies reflect a significantly extended timeline.* ***Yellow*** *- Documentation indicates that Bidder has conducted environmental studies and due diligence and the results reflect a reasonable timeline to meet the commercial operation date.* ***Green*** *- Documentation indicates that the results of environmental studies and due diligence present expedient timelines and very little risk.*			Please Select	Please Select	Please Select	Please Select	Please Select

4	**GIA and Network Upgrades (10%)** If available, Bidder must provide sufficient documentation that preliminary studies have been provided by the Transmission Provider with a schedule and cost estimate for all upgrades that supports the commercial operation date. If no studies have been completed, Bidder must provide assumptions regarding costs and schedule related to interconnection facilities and network upgrades.	***Red*** *- Documentation (or lack thereof) indicates that the schedule provided in the studies do not support the commercial operation date.* ***Yellow*** *- Documentation indicates that the schedule and cost estimate for all upgrades are appropriate and support the commercial operation date.* ***Green*** *- Documentation indicates that Generation Interconnect Agreement has been executed with a schedule and cost estimate specified for all upgrades that support the commercial operation date.*			Please Select	Please Select	Please Select	Please Select	Please Select
5	**Experience (15%)** Bidder must provide sufficient documentation that Bidder has sufficient experience with developing, constructing and/or operating the same technology as being proposed. Bidder must demonstrate ability to successfully complete contractual obligations of any contracts within the last five years and identify any contractual agreements that have been terminated, regardless of technology proposed.	***Red*** *- Documentation (or lack thereof) indicates no documented experience.* ***Yellow*** *- Documentation indicates that experience includes development (but not commercial operation) of facilities of at least 50% of the nameplate capacity.* ***Green*** *- Documentation indicates that experience includes facilities greater than 50% of the nameplate capacity and has successfully brought projects online.*			Please Select	Please Select	Please Select	Please Select	Please Select
6	**Safety (5%)** Bidder must provide sufficient documentation that with regards to safety, Bidder represents it has a total recordable incident (TRI) level lower than or equal to the TRI for their industry as determined by the U.S. Occupational Health and Safety Administration (OSHA).	***Red*** *- Documentation (or lack thereof) indicates TRI level worse than this standard OR has no Safety Standards OR has not provided adequate documentation.* ***Green*** *- Documentation indicates a TRI level equal to or better than this standard and the Safety Standard is consistent with industry expectations and applicable to contractors.*			Please Select	Please Select	Please Select	Please Select	Please Select
7	**Financing (5%)** Bidder must provide sufficient documentation that Bidder has a Financing Plan that demonstrates ability to finance project construction and/or ongoing operations.	***Red*** *- Documentation (or lack thereof) indicates no financing plan is in place or is insufficient.* ***Green*** *- Documentation indicates that Bidder has a Financing Plan that demonstrates ability to finance project construction and/or ongoing operations.*			Please Select	Please Select	Please Select	Please Select	Please Select
8	**Development Schedule (15%)** Bidder must provide sufficient documentation that the schedule includes development and construction milestones (major equipment procurement and delivery on site, EPC execution and notice to proceed, interconnection backfeed, mechanical completion) which support the commercial operations date (including consideration for RFP evaluation, contract negotiation, regulatory approvals, etc). In addition, the Development Schedule shall include, in addition to the timeline and major milestones, a description of risks, their influence on the project's critical path, and any mitigation strategies.	***Red*** *- Documentation (or lack thereof) indicates that the milestones do not support the commercial operation date or that the risks are not reasonably mitigated.* ***Green*** *- Documentation indicates that the milestones do support the commercial operation date.* ***Not Applicable*** *- this is not applicable for operating assets*			Please Select	Please Select	Please Select	Please Select	Please Select
9	**Project Development Status (10%)**	***Red*** - Proposal is conceptual in nature and/or does not seem to include all applicable costs of the project. ***Yellow*** - Project proposal is beyond conceptual, but is not detailed and/or does not have proven pricing/schedule certainty. ***Green*** - Proposal is detailed with firm design concepts and pricing. ***Not Applicable*** *- this is not applicable for operating assets*			Please Select	Please Select	Please Select	Please Select	Please Select

10	**Existing Conditions (5%)** Bidder must provide sufficient documentation that for proposed projects involving existing assets, the facility condition does not require capital improvements or repairs to ensure operations and reliability for the term identified in the bid.	***Red*** *- Documentation (or lack thereof) indicates that the facility will require several significant capital improvements or repairs.* ***Yellow*** *- Documentation indicates that the facility will require some significant capital improvements or repairs.* ***Green*** *- Documentation indicates that the facility will require no significant capital improvements or repairs.* ***Not Applicable*** *- this is not applicable for new assets*			Please Select	Please Select	Please Select	Please Select	Please Select
11	**Gas Interconnection, Supply, and Transport, if applicable (10%)** Bidder must identify and provide documentaiton as to the status and complexity of interconnection to gas infrastructure, pipeline transportation capacity (feeder and upstream pipelines), and firmness of gas supply.	***Red*** *- Proposed resource is >10 miles away from gas pipeline, transport capcity and requried pressure is unlikely or unknown, or discussions securing firm supply have not started.* ***Yellow*** *- Proposed resource is 10 miles or less from the proposed pipeline, preliminary discussions have taken place with an estimate of pipeline transportation, costs and availability of interconnection is sufficient, and some firm supply is available, but limited and supplier discussions have started.* ***Green*** *- The proposed resource has gas infrastructure on or very near the site, confirmed available transport capacity and required pressure, and firm supply is available.* ***Not Applicable*** *- this is not applicable for non-gas resources*			Please Select	Please Select	Please Select	Please Select	Please Select

Exhibits B, C, D - Bid Entry Form (BEF)

Resource Based Price Input Sheet - PPA and BSA

Idaho Power Company 2032 All Source RFP

Color Code:

Bidder to fill
Autofill

Directions:

Fill out all relevant information for each individual proposed resource. Portfolio Bids must enter a line for each individual resource.

- For example, Solar plus Wind plus BESS should fill out 3 rows with the appropriate information. The Bid (Portfolio) ID will link the 3 projects together

Please add any clarification in the Bidder notes column.

Pricing inputs within this form should be all-inclusive and capture all costs associated with obligations under the anticipated contract scope. Proposal narrative and Bidder notes should provide any appropriate context, but should not be relied upon to provide pricing terms associated with compensation under the contract. If a Proposal does not provide comprehensive pricing within the provided form, it may be considered non-conforming and removed from further consideration.

Bid Summary

Resource ID	Bidder	Bid (Portfolio) ID	Facility Name	Resource Type	Generation Interconnection Queue #	Structure	Contract Term	COD / Contract Start Date	Point of Delivery	County, State	Contingent on IPC transmission rights?
Text	*Text*	*Text*	*Text*	*Text*	*Text*	*Text*	*Years*	*Date*	*Text*	*Text*	*Yes/No*

Pricing Inputs

Capacity Charge (Year 1)	Capacity Charge - Annual Escalation	Year 1 Capacity Payment	Renewable PPA - Energy Price (Year 1)	Renewable PPA - Energy Price Annual Escalation	Year 1 Energy Payment	Gas-Based PPA - Variable O&M (Year 1)	Gas-Based PPA - Variable O&M Escalation	Gas Price Index	Fuel Adder	Start Charge	Start Charge Annual Escalation	Reimbursable Network Upgrade Costs	Price includes Reimbursable Network Upgrade Costs	Bidder Notes
$/kW-yr	*%*	*$*	*$/MWh*	*%*	*$*	*$/MWh*	*%*	*Name*	*$/MMBtu*	*$/Complete Start*	*%*	*$*	*Yes/No*	

Technical Inputs

Mutually Exclusive Bids	Project Design Life	Capacity Factor	Nameplate Capacity at POI	Interconnection Capacity	Storage Contract Capacity (Power)	Storage Contract Capacity (Energy)	Storage Duration	Energy Storage Cycle Life	Storage Maximum Cycles Allowed Per Year	Summer Maximum Capacity	Summer Minimum Capacity	Winter Maximum Capacity	Winter Minimum Capacity
Bid ID	*Years*	*%*	*MW_{ac}*	*MW_{ac}*	*MW_{ac}*	*MWh_{ac}*	*Hours*	*Cycles*	*Cycles*	*MW_{ac}*	*MW_{ac}*	*MW_{ac}*	*MW_{ac}*

Auxiliary Power	Start-up Fuel	Maximum Ramp-Up Rate	Maxium Ramp-Down Rate	Planned Outage Rate	Forced Outage Rate	CO_2 emission rate	NO_x emission rate	SO_x emission rate	Average Heat Rate of Maximum Dependable Summer Base Capacity	Average Heat Rate of Minimum Dependable Summer Base Capacity	Average Heat Rate of Maximum Dependable Winter Base Capacity	Average Heat Rate of Minimum Dependable Winter Base Capacity	Bidder Notes
MW_{ac}	*MMBtu/Start*	*MW/minute*	*MW/minute*	*%*	*%*	*lbs/MMBtu*	*lbs/MMBtu*	*lbs/MMBtu*	*Btu/kWh*	*Btu/kWh*	*Btu/kWh*	*Btu/kWh*	

Resource Based Price Input Sheet - Build-Transfer Agreements

Idaho Power Company 2032 All Source RFP

Color Code:

Bidder to fill
Autofill

Directions:

Fill out all relevant information for each individual proposed resource. Portfolio Bids must enter a line for each individual resource.

- For example, Solar plus Wind plus BESS should fill out 3 rows with the appropriate information. The Bid (Portfolio) ID will link the 3 projects together.

Please add any clarification in the Bidder notes column

If the proposed project is PTC or ITC eligible, please confirm that project will follow all IRS guidance to obtain the full ITC or PTC under the IRA law in the Bidder Notes column. If eligible for the Bonus PTC/ITC, please provide details within the Bidder Notes column.

Pricing inputs within this form should be all-inclusive and capture all costs associated with obligations under the anticipated contract scope. Proposal narrative and Bidder notes should provide any appropriate context, but should not be relied upon to provide pricing terms associated with compensation under the contract. If a Proposal does not provide comprehensive pricing within the provided form, it may be considered non-conforming

Bid Summary

Resource ID	Bidder	Bid (Portfolio) ID	Facility Name	Resource Type	Generation Interconnection Queue #	Structure	COD / Contract Start Date	Point of Delivery	County, State	Contingent on IPC transmission rights?
Text	*Text*	*Text*	*Text*	*Text*	*Text*	*Text*	*Date*	*Text*	*Text*	*Yes/No*

Pricing Inputs (Asset Purchase Price)

Asset Purchase Price	Lump Sum or Progress Payment?	Progress Payment - Proposed Milestones and Payment Schedule	Network Upgrade Costs	Price includes Network Upgrade Costs	PTC/ITC Eligible	ITC %	PTC/ITC Bonus Credit	Bidder Notes
$	*Dropdown*	*File Name*	*$*	*Yes/No*	*Yes/No*	*%*	*% (e.g., 10% adder)*	

Pricing Inputs (O&M Package Pricing)

Fixed O&M	Storage Augmentation Fee	Fixed O&M General - Escalation	Storage Augmentation Fee - Escalation	Variable O&M	Variable O&M General - Escalation	Bidder Notes
$/kW-mo	*$/kW-mo*	*%*	*%*	*$/MWh*	*%*	

Technical Inputs

Mutually Exclusive Bids	Project Design Life	Capacity Factor	Non-storage Installed Capacity	Non-storage Nameplate Capacity at POI	Storage Installed Capacity (Power)	Storage Installed Capacity (Energy)	Storage Contract Capacity (Power)	Storage Contract Capacity (Energy)	Storage Overbuild Years (should account for 2 year overbuild assuming 1 cycle per day)	Energy Storage Cycle Life	Storage Duration
Bid ID	*Years*	*%*	*MW_{dc}*	*MW_{ac}*	*MW_{dc}*	*MWh_{dc}*	*MW_{ac}*	*MWh_{ac}*	*Years*	*Cycles*	*Hours*

Interconnection Capacity	Summer Maximum Capacity	Summer Minimum Capacity	Winter Maximum Capacity	Winter Minimum Capacity	Auxiliary Power	Energy Degradation	Per Cycle Degradation (Storage Only)	Storage AC-AC Round Trip Efficiency - Year 1	Storage AC-AC Round Trip Efficiency - End of Life	Storage Maximum Cycles Allowed Per Year	Start-up Fuel
MW_{ac}	*MW_{ac}*	*MW_{ac}*	*MW_{ac}*	*MW_{ac}*	*MW_{ac}*	*%/year*	*%/cycle*	*%*	*%*	*Cycles/year*	*MMBtu/start*

Maximum Ramp-up Rate	Maximum Ramp-down rate	Planned Outage Rate	Forced Outage Rate	CO2 emission rate	NOx emission rate	SOx emission rate	Average Heat Rate of Maximum Dependable Summer Base Capacity	Average Heat Rate of Minimum Dependable Summer Base Capacity	Average Heat Rate of Maximum Dependable Winter Base Capacity	Average Heat Rate of Minimum Dependable Winter Base Capacity	Construction Time	Bidder Notes
MW/minute	*MW/minute*	*%*	*%*	*lbs/MMBtu*	*lbs/MMBtu*	*lbs/MMBtu*	*Btu/kWh*	*Btu/kWh*	*Btu/kWh*	*Btu/kWh*	*Months*	

Exhibit D - Market Purchase Non-Pricing Scoring Sheet

daho Power Company 2032 All Source RFP

Color Code:
Bidder to fill
Autofill

Bidder:

Bid (Portfolio) ID		
Resource ID		
Facility Name		
Resource Type		
Structure		
Ownership		
Contract Term (Years)		
Contract Capacity (MWac)		
COD / Contract Start Date		
Existing or New?		
Point of Delivery		
County, State		
Contingent on IPC transmission rights?		
Total Non-Pricing Score	0.00	0.00

Market Purchase Information

	Product Attributes		Name of Supporting Document(s)	Comments	Response 1	Response 2
1	**Product Type (10%)** WSPP Schedule C or equivalent preferred	***Red*** *- Other/less firm* ***Yellow*** *- Schedule B or equivalent* ***Green*** *- Schedule C or equivalent*			Please Select	Please Select
2	**Contribution to Identified Needs (10%)** Consistency with / contribution to seasonal energy volumes identified as needed in Exhibit E.	***Red*** *- Does not meet* ***Green*** *- Meets*			Please Select	Please Select
3	**Shaping Options (8%)** Product offers ability to shape into various time periods	***Red*** *- No flexibility* ***Green*** *- Seasonal, multi-day, or intra-day shaping flexibility*			Please Select	Please Select
4	**Product Flexibility (8%)** Product offers daily option to not take energy or other product flexibility	***Red*** *- No flexibility* ***Green*** *- Daily option or other flexibility*			Please Select	Please Select
5	**WRAP Eligibility (10%)** Product meets minimum WRAP eligibility requirements - resource specific, or - system sale by WRAP participant (or if non-participant, sale is surplus to seller's own needs, assurance the seller will not fail to deliver to meet other commercial obligations, and there must be priority 6 or 7 transmission to Point of Delivery)	***Red*** *- Does not meet* ***Green*** *- Meets*			Please Select	Please Select
6	**WRAP Eligibility (10%)** Product offers Qualified Capacity Contribution (QCC) value equal to volume being offered.	***Red*** *- No QCC offered* ***Yellow*** *- QCC is less than volume being offered* ***Green*** *- Product has QCC equal to volume being offered*			Please Select	Please Select
7	**Point of Delivery (10%)** Delivery to one of the points listed in Exhibit E	***Red*** *- No* ***Green*** *- Yes*			Please Select	Please Select
8	**Pricing Structure (8%)** Index Price Preferred	***Red*** *- Fixed price offered* ***Green*** *- Index price offered*			Please Select	Please Select
9	**Pricing Structure (10%)** Pricing does not include the costs of compliance with regulatory requirements not applicable in Idaho or Oregon	***Red*** *- No, pricing includes regulatory costs (such as costs/risk associated with sinking in Washington)* ***Yellow*** *- Uncertain* ***Green*** *- Yes, pricing reflects product sinking in Idaho or Oregon.*			Please Select	Please Select
10	**Term (8%)** Product offers overall term of at least 3 years	***Red*** *- No* ***Green*** *- Yes*			Please Select	Please Select
11	**Form of Agreement (8%** Bidder proposes confirm under WSPP or IDSA Power Annex master agreement	***Red*** *- No* ***Green*** *- Yes*			Please Select	Please Select

Market Purchase Price Input Sheet

Idaho Power Company 2032 All Source RFP

Color Code:

Bidder to fill
Autofill

Directions:
Fill out all relevant information for each individual Bid.
Please add any clarification in the Bidder Notes column.

Pricing inputs within this form should be all-inclusive and capture all costs associated with obligations under the anticipated contract scope. Proposal narrative and Bidder notes should provide any appropriate context, but should not be relied upon to provide pricing terms associated with compensation under the contract. If a Proposal does not provide comprehensive pricing within the provided form, it may be considered non-conforming and removed from further consideration.

Bid Summary

Resource ID	Bidder	Bid (Portfolio) ID	Contract Capacity	Contract Term	Contract Start Date	Point of Delivery	Contingent on IPC transmission rights?
Text	*Text*	*Text*	*MW*	*Years*	*Date*	*Text*	*Yes/No*

Pricing Inputs

Mutually Exclusive Bids	Index Price	Identify Index	Adder associated with Index Price	Other Price Structure (i.e., fixed)	Other Price	Other Price Escalation	Is the price based on the energy being sunk in Idaho or Oregon?	Bidder Notes
Bid ID	*Yes/No*	*Text*	*$/MWh*	*Text*	*$/kW-mo*	*%*	*Yes/No*	

Idaho Power 2032 All Source RFP
Exhibit E - Transmission Paths and Delivery Points

Background

Exhibit E summarizes the criteria for whether a bid will be considered incremental capacity for purposes of the 2032 All-Source RFP and provides information relevant to both Resource Bids and Market Purchase Bids.

Eligible Delivery Points and Transmission Paths and Incrementality

Bids must provide for delivery to Idaho Power via interconnection within its system, at its border (WALA, LOLO, SMLK, HURR, LGRD, M345, JEFF, BRDY, BORA) or at one of the points listed in Table 1 or 2 below. The capacity available at the Idaho Power border varies by point.[1] Idaho Power will consider the impact to and use of available transmission capacity in its evaluation. Idaho Power will include any costs it incurs under the transmission provider's Open Access Transmission Tariff for use of the capacity listed below in its evaluation of bids relying on such capacity.

The RFP specifically seeks bids that provide incremental capacity to address Idaho Power's capacity needs in 2031 and 2032. Idaho Power will accept bids that do not provide incremental capacity, and they will be evaluated in the RFP based on economics and other relevant factors but will not be assumed to address Idaho Power's capacity deficits.

To be considered to provide incremental capacity, a bid must offer capacity that Idaho Power has not already counted for 2031 or 2032 in its Integrated Resource Plan and RFP modeling. For example, existing resources with contracts in effect through that time are already counted. Existing resources with contracts that expire before then are not counted and a bid for capacity from such a resource would provide incremental capacity. Regarding transmission, the transmission paths and volumes in Table 1 were counted on in the IRP and RFP modeling; bids proposing to interconnect to or use such transmission would not provide incremental capacity. The transmission paths and volumes in Table 2 were not counted on in the IRP and RFP modeling, and bids proposing to use such transmission may offer incremental capacity as long as the generation capacity was also incremental to Idaho Power's system. The information provided below is accurate as of the date of this RFP. Idaho Power's rights to third-party transmission is subject to change. Up-to-date information is available on the Open-Access Same-Time Information System (OASIS).

Off-system bids that propose to deliver to Idaho Power's border using transmission not held by Idaho Power (not listed in the tables below) may be considered as offering incremental capacity, depending on the relevant details.

Actual final Delivery Points for any final shortlisted bids will be subject to negotiation by the parties based on updated information at the time.

[1] The Idaho Power Transmission Provider determines what capacity is available on Idaho Power's transmission system for Idaho Power load service on an annual basis. Any resources or energy procured under the 2032 RFP would be included in Idaho Power's load and resource forecast and included in transmission evaluations as of Idaho Power's ownership or purchase of the resource or energy.

Idaho Power 2032 All Source RFP
Exhibit E - Transmission Paths and Delivery Points

Table 1: Transmission Paths and Volumes Assumed in IRP/RFP (Not Considered Incremental) (Paths and Volumes Subject to Change)

Point of Delivery	Months Counted in IRP/RFP (Not Considered Incremental)	Volume Counted in IRP/RFP
MIDC	June - September	100 MW[2]
MIDCREMOTE	June - September	500 MW[3]
Mona/Four Corners	November - March	200 MW available between the two points[4]
Harry Allen/Robinson Summit/M345	November - March	500 MW available between the two points[5]

Table 2: Transmission Paths and Volumes Potentially Available and Not Assumed in IRP/RFP (May Be Considered Incremental) (Paths and Volumes Subject to Change)

Point of Delivery	Months Available as Incremental	Import Capability
MIDC	October - May	Up to 100 MW[6]
MIDCREMOTE	October - May	Up to 500 MW[7]
AVA.BPAT	All months	Up to 100 MW[8]
McNary	All months	Up to 80 MW[9]
Mona/Four Corners	April - October	Up to 200 MW available between the two points[10]
Harry Allen/Robinson Summit/M345	April - October	Up to 500 MW available between the points[11]
RedButte	June - October	Up to 50 MW, June-October[12]

[2] Available through April 30, 2031, with the potential to extend beyond that date if renewed by Idaho Power Load Serving Operations, such renewal being subject to the Transmission Provider's ability to continue to offer the service.
[3] Contingent on B2H being in service.
[4] Contingent on PacifiCorp / Idaho Power asset swap associated with B2H. The Mona and Four Corners points of delivery, in aggregate, may not exceed 200 MW.
[5] Contingent on completion and placement in-service of the Southwest Intertie Project (SWIP). The points of delivery, in aggregate, may not exceed 500 MW.
[6] Available through April 30, 2031, with the potential to extend beyond that date if renewed by Idaho Power Load Serving Operations, such renewal being subject to the Transmission Provider's ability to continue to offer the service.
[7] Contingent on B2H being in service.
[8] Available through April 30, 2027, with the potential to extend beyond that date if renewed by Idaho Power Load Serving Operations, such renewal being subject to the Transmission Provider's ability to continue to offer the service.
[9] Available through December 31, 2027, with the potential to extend beyond that date if renewed by Idaho Power Load Serving Operations, such renewal being subject to the Transmission Provider's ability to continue to offer the service.
[10] Contingent on PacifiCorp / Idaho Power asset swap associated with B2H. The Mona and Four Corners points of delivery, in aggregate, may not exceed 200 MW.
[11] Contingent on completion and placement in-service of the Southwest Intertie Project (SWIP). The points of delivery, in aggregate, may not exceed 500 MW.
[12] Available through May 31, 2029, with the potential to extend beyond that date if renewed by Idaho Power Load Serving Operations, such renewal being subject to the Transmission Provider's ability to continue to offer the service.

Respondent shall review and redline the following draft agreement into the submitted proposal for the specific product type and ownership structure as defined in this RFP.

This draft Exhibit F is not comprehensive and does not constitute a binding offer, shall not form the bases for an agreement by estoppel nor otherwise, and is not conditions upon each party's receipt of all requirement management approvals (including final credit and legal approval) and all regulatory approvals. Any actions taken by a party in reliance on the terms set forth in this working draft or on statements made during negotiations pursuant to this working draft shall be at that party's own risk. Until this agreement is negotiated, approved by management, executed, delivered, and approved by all required regulatory bodies, no party shall have any other legal obligations, expressed or implied, or arising in any other manner under this working draft or in the course of negotiations.

POWER PURCHASE AGREEMENT

BETWEEN

_____

AND

IDAHO POWER COMPANY

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Exhibit 18	Form of Construction Progress Report
Exhibit 19	Form of Operations Report
Exhibit 20	Idaho Power form of Qualified Reporting Entity Agreement
Exhibit 21	Form of Lender Consent
Exhibit 22	Form of Estoppel Certificate

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL) AND ALL REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED, DELIVERED AND APPROVED BY ALL REQUIRED REGULATORY BODIES, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this "Agreement"), dated as of _____, 202_, (the "Effective Date"), is entered into between _____ (the "Seller") and Idaho Power Company, an Idaho corporation ("Idaho Power" or "Buyer"). Seller and Idaho Power are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party."

WHEREAS, Seller intends to construct, own, operate and maintain a solar powered generation facility for the generation of electric energy located in [_____ ____], [Idaho] with an Expected Nameplate Capacity Rating (as defined below) of [____] MW (AC) (the "Facility").

WHEREAS, Seller desires to sell, and Idaho Power desires to purchase, the Net Output and Green Tags (as defined below) delivered by the Facility in accordance with the terms and conditions hereof.

WHEREAS,

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

SECTION 1
DEFINITIONS, RULES OF INTERPRETATION

Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein shall have the following meanings:

1.1 "Abandonment" means (a) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement, or (b) if after commencement of the construction, testing, and inspection of the Facility, and prior to

the Commercial Operation Date, there is a complete cessation of the construction, testing, and inspection of the Facility for ninety (90) consecutive days by Seller and Seller's contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default by Idaho Power, a request by Idaho Power, or an event of Force Majeure.

1.2 "AC" means alternating current.

1.3 "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise.

1.4 "Agreement" is defined in the opening paragraph hereto.

1.5 "As-built Supplement" is a supplement to be added to Exhibit 16 that describes the Facility as actually built, pursuant to Section 7.1 and includes an American Land Title Association survey of the Premises.

1.6 "Anything of Value" includes, but is not limited to, cash or a cash equivalent (including "grease", "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

1.7 "Book Value" means cost minus accumulated depreciation, and not deducting for debt or other encumbrances, calculated in accordance with generally accepted accounting principles consistently applied.

1.8 "Business Day" means any Monday through Friday except NERC recognized holidays beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Boise, Idaho.

1.8 "Calendar Quarter" means any of four quarters in a standard calendar year, specifically Quarter 1 is January 1 – March 31, Quarter 2 is April 1 – June 30, Quarter 3 is July 1 – September 30, and Quarter 4 is October 1 – December 31.

1.9 "Capacity Rights" means any current or future defined characteristic, certificate, tag, credit, reactive power, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax Credits, or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

1.10 "Change of Control" means, with respect to Seller, any transaction or series of

transactions following which Seller's Parent Entity no longer directly or indirectly (i) remains the owner of more than fifty percent (50%) of the direct or indirect equity or voting interests of Seller which are not otherwise held by Seller's Lenders (excluding any Tax Equity Investors), or (ii) retains the power to control the management and policies of Seller; provided, however, that a Seller Permitted Transfer shall not be a Change of Control.

1.11 "Commercial Operation" means that not less than the Required Percentage of the Expected Nameplate Capacity Rating of the Facility is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the System, all of which shall be Seller's responsibility to receive or obtain, and without limiting Seller's other obligations under this Agreement, which occurs when all of the enumerated events listed in Section 4.2 (a) have occurred, and (b) remain simultaneously true and accurate as of the date and moment on which Seller gives Idaho Power written notice that Commercial Operation has occurred:

1.12 "Commercial Operation Date" means the day commencing at 00:01 hours, Mountain Time, following the day that all requirements of Section 4 have been completed and after the Seller requested Operation Date.

1.13 "Confidential Business Information" is defined in Section 25.1.

1.14 "Construction Progress Report" is defined in Section 3.2.1.

1.15 "Contract Interest Rate" means the lesser of (a) the highest rate permitted under Requirements of Law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate." If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with $10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid.

1.16 "Contract Price" means the applicable price, expressed in dollars per MWh for Net Output, Green Tags and Capacity Rights stated in Section 6.1.

1.17 "Contract Year" means any consecutive 12-month period during the Term, commencing at 00:00 hours on the Commercial Operation Date or any of its anniversaries and ending at 24:00 hours on the last day of such 12-month period.

1.18 "Costs" means, with respect to the non-defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement and (b) all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with the termination of this Agreement.

1.19 “CPCN” means Certificate of Public Convenience and Necessity.

1.20 “Credit Requirements” means (a) three (3) years of audited financial statements, a view of the financial position and financial performance, financial statement analysis and financial trend analysis; (b) Debt Agency Ratings - a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of BBB+ or greater from S&P, or Baa1 or greater from Moody’s, and if such ratings are split, the lower of the two ratings must be at least ‘BBB+’ or ‘Baa1’ from S&P or Moody’s, respectively. Idaho Power performs a credit analysis, which considers both qualitative and quantitative factors, to determine whether potential Counterparties have satisfied the Credit Requirements.

1.22 “default” is defined in Section 12.1.

1.23 “Default Security” is defined in Section 9.2.1.

1.24 “Deficit Damages” means a one-time payment equal to (a) the difference between (i) Expected Nameplate Capacity Rating and (ii) the Nameplate Capacity Rating of the Facility on the 120th day after the Guaranteed Commercial Operation Date, stated in MWs, multiplied by (b) [$150,000.]

1.25 “Delay Damages” means for any given day the amount equal to [$XX] multiplied by the Expected Nameplate Capacity Rating in MW.

1.26 “Effective Date” is the date stated in the opening paragraph hereto which represents the date upon which this Agreement was fully executed by both Parties.

1.27 “Electric System Authority” means each of NERC, WECC, WREGIS, an RTO, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region, as such are applicable to the Seller or Idaho Power.

1.28 “Emissions Reduction Credit” means any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act.

1.29 “Energy Imbalance Market” means the California Independent System Operator’s Western Energy Imbalance Market.

1.30 “Environmental Attributes” means the environmental and other attributes as may exist from time to time that differentiate the Project or its Project Energy from energy generated by fossil fuel or nuclear powered generating units, and any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled,

attributable to the generation from the Project, and its displacement of conventional energy generation, or resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; (b) 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 any Governmental Authority to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (c) and Emission Reduction Credits; (d) any cryptocurrency, blockchain, and similar or related matters, items commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with anything produced by Facility Energy and (e) credits, benefits or allowances resulting from the compliance of the Facility or Facility Energy with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes do not include (i) the ITC or any other Tax Credits, or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by Idaho Power as sources of liability, or (iii) adverse wildlife or environmental impacts.

1.31 "Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

1.32 "Event of Default" is defined in Section 12.1.

1.33 "Expected Energy" means _____MWh of Net Output in the first, full Contract Year, reduced by an annual degradation factor of 0.3 percent per Contract Year, measured at the Point of Delivery, which is Seller's best estimate of the projected long-term average annual Net Output production, based upon typical solar conditions at the Facility as determined by a Solar Performance Modeling Program, delivered to the Point of Delivery and the Expected Nameplate Capacity Rating. Seller estimates that the Net Output will be delivered during each Contract Year according to the estimates of Monthly Net Output set forth in Exhibit 4. If at Final Completion the Facility's Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating, Expected Energy shall be reduced proportionally per year for each full MW of Nameplate Capacity Rating below the Expected Nameplate Capacity Rating. Seller acknowledges that Idaho Power will include Expected Energy in Idaho Power's resource planning. Idaho Power acknowledges that solar insolation is variable and that the Facility's actual annual output of Net Output in the ordinary course in any given year will be subject to variation caused by differences in the actual solar insolation at the Facility from year to year and month to month.

1.34 "Expected Nameplate Capacity Rating" means [____] MW (AC). The expected

maximum instantaneous generation capacity of the Facility.

1.35 "Facility" is defined in the Recitals and is more fully described in attached Exhibit 2 and includes the photovoltaic power generating equipment, including panels, arrays, tracking system (if applicable), inverters, and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to Idaho Power and required to interconnect with the System and Seller's interests in the Premises, including Leases and any fee owned real property.

1.36 "FERC" means the Federal Energy Regulatory Commission.

1.37 "Final Completion" means the Facility is fully operational and reliable, at or greater than the Required Percentage of the Expected Nameplate Capacity Rating, and fully interconnected, fully integrated, and synchronized with the Transmission Provider's System, modified if necessary to reflect the Nameplate Capacity Rating and, if applicable, through completion of all the items set forth on the Final Completion Schedule.

1.38 "Final Completion Schedule" means the full list of all items to be completed in order to achieve Final Completion, See Section 4.2, Commercial Operation Date.

1.39 "First Generation Date" means the day commencing at 00:01 hours, Mountain Time, following the day that Seller has satisfied the requirements of Section 3 and after the Seller requested First Generation Date.

1.40 "Force Majeure" and "event of Force Majeure" are defined in Section 15.1.

1.41 "Forced Outage" means NERC Event Types U1, U2 and U3, as set forth in attached Exhibit 6, and specifically excludes any Maintenance Outage or Planned Outage.

1.42 "Forward Settlement Amount" means, with respect to the non-defaulting Party, the net Losses and Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the termination of this Agreement plus all amounts then owed to the non-defaulting Party by the defaulting Party. If the non-defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Forward Settlement Amount shall be zero.

1.43 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the early termination of this Agreement for the remainder of the Term that would have occurred but for the occurrence of the Event of Default and early termination, determined in a commercially reasonable manner.

1.44 "Generator Interconnection Agreement" or "GIA" means the large generator interconnection agreement entered into separately between Seller and Interconnection

Provider concerning the Interconnection Facilities.

1.45 "GOLC" or "Generator Output Limit Control" means the equipment and capability of an electric generation facility to automatically adjust the generation quantity.

1.46 "GOLC Set-Point" means the analog or digital signal sent to the Facility by Idaho Power, the Interconnection Provider, the Transmission Provider or the Market Operator representing the maximum Net Output for the Facility.

1.47 "Government Official" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

1.48 "Governmental Authority" means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Idaho Power or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

1.49 "Green Tags" means (a) the Environmental Attributes associated with all Output, together with (b) the Green Tag Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified," or otherwise. One Green Tag represents the Environmental Attributes made available by the generation of one MWh of electric energy from the Facility.

1.50 "Green Tags Price Component" means the greatest of: (1) the price for Green Tags determined by arithmetically averaging quotes for Green Tags from three nationally recognized independent Green Tag brokers selected by Idaho Power pursuant to which Idaho Power could reasonably purchase substitute Green Tags similar to those Green Tags that Seller failed to deliver, with delivery terms, vintage period and any renewable program certification eligibility that are similar to those contained herein, calculated as of the date of default or as soon as reasonably possible thereafter; (2) if after the Effective Date a liquid market for Green Tags exists, the price established for Green Tags from the established liquid market for Green Tags in a form and location that Idaho Power determines reasonably states the market value of the Green Tags delivered hereunder; or (3) Five Dollars ($5.00) per Green Tag.

1.51 "Green Tag Reporting Rights" means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or

state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, including under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

1.52 "Guaranteed Commercial Operation Date" means the date that is ninety (90) days after the Scheduled Commercial Operation Date.

1.53 "Hazardous Materials" means any waste or other substance that is listed, defined, designated or classified as or determined to be hazardous under or pursuant to any environmental law or regulation.

1.54 "Idaho Power" and "Buyer" are defined in the opening paragraph, and explicitly excludes Idaho Power Transmission.

1.55 "Idaho Power's Cost to Cover" means the positive difference, if any, between (a) the sum of (i) the time weighted average of the Market Price Index for each day for which the determination is being made, plus (ii) the Green Tags Price Component, and (b) the Contract Price specified in Exhibit 5 in effect on such days, stated as an amount per MWh. If on a given day (or month in the case of calculating Output Shortfall) the difference between (a) minus (b) referenced above is zero or negative, then Idaho Power's Cost to Cover shall be zero dollars ($0), and Seller shall have no obligation to pay any amount to Idaho Power on account of Section 7.12.3 or Section 12.2.1 with respect to such day (or month in the case of calculating Output Shortfall).

1.56 "Idaho Power Indemnitees" is defined in Section 13.1.1.

1.57 "Idaho Power Representatives" is defined in Section 7.13.

1.58 "Idaho Power Transmission" means Idaho Power Company, an Idaho corporation, acting in its interconnection or transmission function capacity.

1.59 "Indemnified Party" is defined in Section 7.2.3.2.

1.60 "Indemnifying Party" is defined in Section 7.2.3.2.

1.61 "Interconnection Facilities" means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the System, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

1.62 "Interconnection Provider" means Idaho Power Transmission.

1.63 "Inverter" means the equipment installed at the Facility to convert direct current from the Solar Panels to AC, as described in Exhibit 2.

1.64 "IPUC" means the Idaho Public Utilities Commission.

1.65 "IRP" means Idaho Power's Integrated Resource Plan.

1.66 "ITC" means the investment tax credit established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

1.67 "Leases" means the memoranda of lease and redacted leases recorded in connection with the development of the Facility, as the same may be supplemented, amended, extended, restated, or replaced from time to time.

1.68 "Lender" means an entity lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax equity investor, backleverage financing or credit derivative arrangement) to Seller or Seller's Affiliates (a) for the construction, term or permanent financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) for any development financing, bridge financing, credit support, and related credit enhancement in connection with the development, construction or operation of the Facility; or (d) for the purchase of the Facility and related rights from Seller.

1.69 "Letter of Credit" means an irrevocable standby letter of credit in a form reasonably acceptable to Idaho Power, naming Idaho Power as the party entitled to demand payment and present draw requests thereunder that:

1.69.1 is issued by a Qualifying Institution;

1.69.2 by its terms, permits Idaho Power to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

1.69.3 permits Idaho Power to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) days prior to its stated expiration date;

1.69.4 permits Idaho Power to draw the entire amount available thereunder if such letter of credit is not increased or replaced as and when provided in Section 9;

1.69.5 is transferable by Idaho Power to any party to which Idaho Power may assign this Agreement; and

1.69.6 shall remain in effect for at least ninety (90) days after the end of the Term.

1.70 "Liabilities" is defined in Section 13.1.1.

1.71 "Licensed Professional Engineer" means a person proposed by Seller and acceptable to Idaho Power in its reasonable judgment who (a) to the extent mandated by Requirements of Law is licensed to practice engineering in the appropriate engineering discipline for

the required certification being made, in the state of Idaho, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Seller and is not an employee of its members or Affiliates, other than with the prior written consent of Idaho Power, for services previously or currently being rendered to Seller or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or a representative of a manufacturer or supplier of any equipment installed in the Facility.

1.72 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remainder of the Term that would have occurred but for the occurrence of the Event of Default and early termination of this Agreement, determined in a commercially reasonable manner. If Seller is the non-defaulting Party, "Losses" will exclude the loss, repayment or recapture of any Tax Credits. If Buyer is the non-defaulting Party, "Losses" will include Buyer's cost of replacing this Agreement with an agreement for new renewable capacity from a facility with similar technology that has not yet been constructed.

1.73 "Maintenance Outage" means NERC Event Type MO, as set forth in attached Exhibit 6, and includes any outage involving ten percent (10%) of the Facility's Net Output that is not a Forced Outage or a Planned Outage.

1.74 "Market Operator" means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market.

1.75 "Market Price Index" means 82.4% of the monthly arithmetic average of each day's Intercontinental Exchange ("ICE") daily firm Mid-C Peak Avg and Mid-C Off-Peak Avg index prices in the month as follows:

The actual calculation being:

$$.824 * \left(\sum_{X=1}^{n} \{(\text{ICE Mid-C Peak Avg}_x * \text{HLH hours for day}) + (\text{ICE Mid-C Off-Peak Avg}_x * \text{LLH hours for day})\} / (n*24) \right)$$

where n = number of days in the month

If the ICE Mid-C Index prices are not reported for a particular day or days, prices derived from the respective averages of HLH and LLH prices for the immediately preceding and following reporting periods or days shall be substituted into the formula stated in this definition and shall therefore be multiplied by the appropriate respective numbers of HLH and LLH Hours for such particular day or days with the result that each hour in such month shall have a related price in such formula. If the day for which prices are not reported has in

it only LLH Hours (for example a Sunday), the respective averages shall use only prices reported for LLH hours in the immediately preceding and following reporting periods or days. If the day for which prices are not reported is a Saturday or Monday or is adjacent on the calendar to a holiday, the prices used for HLH Hours shall be those for HLH hours in the nearest (forward or backward) reporting periods or days for which HLH prices are reported

1.76 "Marketing Communications Agreement" means an agreement substantially in the form of Exhibit "xx" attached hereto, with such revisions as may be mutually agreed upon by Seller and Buyer.

1.77 "Maximum Delivery Rate" means the maximum hourly rate of delivery of Net Output in MWh from the Facility to the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating.

1.78 "Moody's" means Moody's Investor Services, Inc.

1.79 "Mountain Prevailing Time" or "MPT" means Mountain Standard Time or Mountain Daylight Time, as applicable in Idaho on the day in question.

1.80 "MW" means megawatt.

1.81 "MWh" means megawatt hour.

1.82 "Nameplate Capacity Rating" means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW (AC), when operated in compliance with the Generator Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the Solar Panels and Inverters, as set forth in a written notice from Seller to Idaho Power delivered prior to the Commercial Operation Date and, if applicable, updated in a subsequent written notice from Seller to Idaho Power as required for Final Completion. The Nameplate Capacity Rating of the Facility shall not exceed the Expected Nameplate Capacity Rating.

1.83 "NERC" means the North American Electric Reliability Corporation.

1.84 "Net Output" means all electric energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller's load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of electric energy shall be the amount of electric energy flowing through the Point of Delivery.

1.85 "Network Resource" is defined in the Tariff.

1.86 "Network Service Provider" means Idaho Power Transmission, as a provider of network service to Idaho Power under the Tariff.

1.87 “Non-Compensable Curtailment” is defined in Section 5.4.1.

1.88 “Offer Notice” is defined in Section 8.2.

1.89 “Offered Interests” is defined in Section 8.4.1.

1.90 “Off-Peak Hours” or “LLH” means the daily hours from hour ending 2300 – 0600 MPT, (8 hours), plus all other hours on all Sundays and NERC designated holidays.

1.91 “On-Peak Hours” or “HLH” means the daily hours from hour ending 0700 - 2200 MPT, (16 hours), Monday through Saturday, excluding all hours on all Sundays and NERC designated holidays.

1.92 “Operations Report” is defined in Section 3.2.2.

1.93 “OPUC” means the Public Utility Commission of Oregon.

1.94 “Output” means all electric energy produced by the Facility.

1.95 “Output Guarantee” is defined in Section 7.12.1.

1.96 “Output Shortfall” is defined in Section 7.12.3.2.

1.97 “Party” and “Parties” are defined in the opening paragraph hereto.

1.98 “Permits” means the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership or operation of the Facility or occupancy of the Premises, and all amendments, modifications, supplements, general conditions and addenda thereto.

1.99 “Planned Outage” means NERC Event Type PO, as set forth in attached Exhibit 6, and specifically excludes any Maintenance Outage or Forced Outage.

1.100 “Point of Delivery” means the point of interconnection between the Facility and the System, as specified in the Generator Interconnection Agreement and as further described in Exhibit 3.

1.101 “Pre-COD Damages Payment” means liquidated damages in an amount equal to the amount of Project Development Security required to be provided hereunder, plus the Delay Damages Seller has paid to Buyer.

1.102 “Premises” means the real property on which the Facility is or will be located, as more fully described on Exhibits 9, 10 and 15.

1.103 “Project Development Security” is defined in Section 9.1.1.

1.104 "Prudent Electrical Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the independent electric power generation industry in the United States for solar facilities of similar size and characteristics or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.

1.105 "Qualified Operator" is (a) a partnership, corporation or limited liability company that demonstrates acceptable experience operating a solar generation, or (b) any other Person reasonably acceptable to Buyer.

1.106 "Qualifying Institution" means a United States commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof having assets of at least $10,000,000,000 (net of reserves) and a credit rating on its long-term senior unsecured debt of at least "A" from S&P and "A2" from Moody's.

1.107 "Reporting Month" is defined in Section 7.10.1.

1.108 "Required Facility Documents" means the Permits and other authorizations, rights and agreements now or hereafter necessary for construction, ownership, operation, and maintenance of the Facility, and to deliver the Net Output to Idaho Power in accordance with this Agreement and Requirements of Law, including those set forth in Exhibit 9.

1.109 "Required Percentage" means ninety-three percent (93%).

1.110 "Requirements of Law" means any applicable and mandatory (but not merely advisory) federal, state and local law, statute, regulation, rule, action, order, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and wildlife protection and occupational safety and health).

1.111 "Restricted Period" is defined in Section 8.2.

1.112 "Restricted Transaction" is defined in Section 8.4.1.

1.113 "ROFO" is defined in Section 8.2.

1.114 "ROFO Period" is defined in Section 8.4.1.

1.115 "ROFO Seller" is defined in Section 8.4.1.

1.116 "RTO" means any entity (including an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

1.117 "S&P" means Standard & Poor's Rating Group (a division of S&P Global, Inc.).

1.118 "Sanctions" means any economic or trade sanctions administered or enforced by any Government Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community or, Her Majesty's Treasury or any, and each other sanctions authority which has jurisdiction in respect of any Party or the Facility.

1.119 "Sanctioned Person" means any person (i) that is the target of Sanctions or owned or controlled by any such person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

1.120 "Sanctioned Territory" means any country or territory now or hereafter subject to comprehensive Sanctions.

1.121 "SCADA" means supervisory control and data acquisition.

1.122 "Scheduled Commercial Operation Date" means _____.

1.123 "Seller" is defined in the opening paragraph hereto.

1.124 "Seller Indemnitees" is defined in Section 13.1.2.

1.125 "Seller ROFO Notice" is defined in Section 8.4.1.

1.126 "Seller's Cost to Cover" means the positive difference, if any, between (a) the Contract Price per MWh specified in Exhibit 5, and (b) the time weighted average of the Market Price Index of Net Output not purchased by Idaho Power as required hereunder. If on any given day the difference between (a) minus (b) referenced above is zero or negative, then Seller's Cost to Cover shall be zero dollars with respect to such day, and Idaho Power shall have no obligation to pay any amount to Seller on account of Section 12.2.2. For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (a).

1.127 "Seller's Parent Entity" means [_____].

1.128 "Seller Uncontrollable Minutes" means, for the Facility in any month, the total number of minutes during such month during which the Facility was unable to deliver Net Output to Idaho Power (or during which Idaho Power failed to accept such delivery) due to one or more of the following events, each as recorded by SCADA and indicated by electronic fault logs: (a) an emergency or Force Majeure event; (b) to the extent not caused by Seller's actions or omissions, a Non-Compensable Curtailment in accordance with Section 5.4.1; (c) the System operating outside the voltage or frequency limits defined in the applicable operating manual for the Inverters installed at the Facility; (d) Planned

Outages, but in no event exceeding thirty six (36) hours per Contract Year consistent with such operating manual; (e) Compensable Curtailment as provided in Section 6.1.3; (f) a default by Idaho Power; provided, however, that if any of the events described above in items (a) through (e) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller's non-conformance with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

1.129 "Senior Lenders" means Lenders being granted senior security interests on the Facility or its assets, or Seller or its equity, other than Affiliates of Seller.

1.130 "Solar Array" means one or more Solar Panels connected to the same Inverter.

1.131 "Solar Energy Production Forecasting" is defined in Section 7.7.1.

1.132 "Solar Panels" means the photovoltaic electric energy generating panels installed at the Facility, as described in Exhibits 2 and 15.

1.133 "Solar Performance Modeling Program" means a commercially available computer modeling program that is generally accepted in the United States solar energy industry capable of modeling the Expected Energy and other similar outputs. Solar Performance Modeling Program includes, but is not limited to, the PVSYST program. If Seller elects a Solar Performance Modeling Program to which Idaho Power does not have access, Seller, at its cost, shall provide Idaho Power access to and the right to use the Solar Performance Modeling Program in order for Idaho Power to fully analyze all modeling provided by Seller under this Agreement.

1.135 "Start-Up Testing" means the start-up tests for the Facility as set forth in Exhibit 7.

1.136 "System" means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generation Interconnection Agreement.

1.137 "Tariff" means the Idaho Power FERC Electric Tariff Volume No. 11 Open Access Transmission Tariff, as revised from time to time.

1.138 "Tax Credits" means any state, local and/or federal production tax credit, tax deduction, and/or investment tax credit (including the ITC) specific to the production of renewable energy and/or investments in renewable energy facilities.

1.139 "Term" is defined in Section 4.1.

1.140 “Test Energy” means any Net Output during periods prior to the Commercial Operation Date and related Capacity Rights.

1.141 “Transmission Provider” means Idaho Power Transmission.

1.142 “WECC” means the Western Electricity Coordinating Council.

1.143 “WREGIS” means the Western Renewable Energy Generation Information System.

1.144 “Compensable Curtailment Energy” is defined in Section 6.1.3.

1.145 “Compensable Curtailment Price” is defined in Section 6.1.3.2.

1.144 Rules of Interpretation.

1.144.1 General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Appendices” or “Exhibits” are to articles, sections, schedules, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not limited to”; (h) all references to a particular law or statute mean that law or statute as amended from time to time; (i) all references to electric energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (j) the word “or” is not necessarily exclusive. Reference to “days” shall be calendar days, unless expressly stated otherwise herein.

1.144.2 Terms Not to be Construed For or Against Either Party. Each term hereof shall be construed according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

1.144.3 Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.144.4 Examples. Example calculations and other examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

1.144.5 Interpretation with FERC Orders. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its companion orders, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Interconnection Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the Generation Interconnection Agreement with the Interconnection Provider. Nothing herein is intended to make any statement about FERC jurisdiction in relation to the Seller.

1.145 Other Terms. The Parties acknowledge and agree that the Generator Interconnection Agreement shall be a separate and free standing contract and that the terms hereof are not binding upon the Interconnection Provider.

This Agreement shall not be construed to create any rights between Seller and the Interconnection Provider or between Seller and the Transmission Provider.

Seller expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from Idaho Power whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an Affiliate thereof.

SECTION 2
REPRESENTATIONS AND WARRANTIES

2.1 Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

2.1.1 Organization. It is duly organized and validly existing under the laws of the State of its organization.

2.1.2 Authority. It has the requisite power and authority to enter this Agreement and to perform according to the terms hereof.

2.1.3 Corporate Actions. It has taken all corporate or entity actions required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

2.1.4 No Contravention. The execution and delivery hereof does not contravene any provision of, or constitute a default under, any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, or any valid order of any court, or any regulatory agency or other Governmental Authority having authority to which it is subject.

2.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding

obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

2.1.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of either Party's knowledge, threatened in writing against either Party or its members, with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened in writing against a Party, its members, or any Affiliate, the effect of which would materially and adversely affect the Party's performance of its obligations hereunder.

2.1.7 Eligible Contract Participant. It, and any guarantor of its obligations under this Agreement, is an "eligible contract participant" as that term is defined in the United States Commodity Exchange Act.

2.1.8 Not a Sanctioned Person. It is not a Sanctioned Person.

2.2 Seller's Further Representations and Warranties. Seller further represents, covenants, and warrants to Idaho Power that:

2.2.1 Authority. Seller (a) has (or will have prior to the Commercial Operation Date) all required regulatory authority to make wholesale sales from the Facility; (b) has the power and authority to own and operate the Facility and be present upon the Premises for the Term; and (c) is duly qualified and in good standing under the laws of the state of Idaho and each other jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

2.2.2 No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not and will not:

2.2.2.1 contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any of Seller's members;

2.2.2.2 require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are (i) set forth in Exhibit 9 or (ii) required in connection with the construction, operation, or maintenance of the Facility and expected to be obtained in due course;

2.2.2.3 result in a breach of or constitute a default under any provision of any security issued by any of Seller's members or managers, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder, or any material agreement, instrument or undertaking to which either Seller's members or any Affiliates of Seller's

members is a party or by which the property of any of Seller's members or any Affiliates of Seller's members is bound, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder.

2.2.3 Required Facility Documents. All Required Facility Documents are listed on Exhibit 9. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, or will hold by the Commercial Operation Date (or such other later date as may be specified under Requirements of Law), and will maintain for the Term all Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises. Following the Commercial Operation Date, Seller shall promptly notify Idaho Power of any additional Required Facility Documents.

2.2.4 Delivery of Energy. On or before the Commercial Operation Date, Seller shall hold rights sufficient to enable Seller to deliver Net Output at the Nameplate Capacity Rating from the Facility to the Point of Delivery pursuant to this Agreement throughout the Term.

2.2.5 Control of Premises. Seller has all legal rights necessary for the Seller to enter upon and occupy the Premises for the purpose of constructing, operating and maintaining the Facility for the Term. All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibits 9 and 10. Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the Facility as valid for the Term. Upon request by Idaho Power, Seller shall provide copies of the memoranda of lease recorded in connection with the development of the Facility.

2.2.6 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts including engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller. In entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Idaho Power in connection with the transactions contemplated by this Agreement.

2.2.7 Verification. All information relating to the Facility, its operation and output and the Premises provided to Idaho Power and contained in this Agreement has been verified by Seller and is true and accurate.

2.2.8 Renewable Claims. Seller has at all times complied with the Federal Trade Commission requirements set forth in 16 CFR Part 260 in any communications concerning the Output, the Facility and the Green Tags that have or may be generated from the Facility. Seller has not claimed the Green Tags, Environmental Attributes or other "renewable energy," "green energy," "clean energy" or similar attributes of the

Output or the Facility as belonging to the Seller or any Seller Affiliate and is not aware of any such claims made by third parties with respect to the Facility or the Output.

2.3 No Other Representations or Warranties. Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter hereof.

2.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Section are made as of the Effective Date and deemed repeated as of the Commercial Operation Date. If at any time during the Term, a Party obtains actual knowledge of any event or information that would have caused any of the representations and warranties in this Section 2 to be materially untrue or misleading at the time given, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. If at any time a Party obtains actual knowledge that the representations and warranties in this Section 2 are not true, said Party shall provide written notice to the other Party. The notice required pursuant to this section shall be given as soon as practicable after the occurrence of each such event.

SECTION 3
CONDITIONS PRECEDENT TO TERM

3.1 Conditions to be granted First Generation Date. As a condition of the Buyer's acceptance of deliveries of Net Output from the Seller, the following conditions shall be satisfied.

3.1.1 Commission/Regulatory Approval. This Agreement is subject to, and the obligations of Buyer and Seller to purchase, sell and deliver Net Output, Green Tags and Capacity Rights hereunder shall only become fully effective upon the IPUC's approval of all terms and provisions hereof without change or condition, declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes, and approval of the accounting and regulatory treatment requested by Idaho Power in its application to the IPUC, all to the satisfaction of Buyer (the "*IPUC Approval*"); provided that, notwithstanding anything to the contrary herein, if the IPUC Approval has not been obtained on or prior to the date that is six (6) months after the date that the filings have been made with the IPUC for the IPUC Approval, the Parties agree to consult with each other in good faith for a period of thirty (30) days in the event of any such delay to evaluate whether, notwithstanding such delay, the Facility will achieve Commercial Operation by the Scheduled Commercial Operation Date; provided, further, that if notwithstanding the good faith efforts of the Parties they are not able to so agree, or if the Parties agree that the Facility will not timely achieve Scheduled Commercial Operation Date, then the Agreement may be terminated by Buyer. If IPUC Approval does not occur by the date that is twelve (12) months after the filing of this Agreement for IPUC Approval, then either Party will have a right to terminate this Agreement and upon any such termination neither Party shall have any obligation to the other under this Agreement, except with respect to

the terms and provisions hereof that expressly survive the termination of this Agreement.

3.1.2 Idaho Power will promptly (but in no event later than sixty (60) days following the Effective Date) submit applications with the IPUC for IPUC Approval and pay all costs associated with such filings. Following Idaho Power's filing of such applications for IPUC Approval, Idaho Power shall promptly apprise Seller of any material updates with respect thereto. As promptly as possible, but in any event no later than thirty (30) days, after the IPUC issues an order or other final determination with respect to an application for IPUC Approval, Idaho Power shall notify Seller thereof (providing a copy of such order or determination).

3.2. Idaho Power's Right to Monitor. After the Effective Date, Seller shall, and shall permit Idaho Power and each of its respective advisors and consultants to:

3.2.1 On and after the Execution Date through the Commercial Operation Date, by the tenth (10th) Business Day of each month, Seller will provide Buyer a monthly report for the prior month regarding development, financing and construction updates in the form attached hereto as Exhibit 18, the form of which may be reasonably revised by Buyer from time to time (the "Construction Progress Report").

3.2.2 Thirty (30) days prior to the expected Commercial Operation Date and thereafter from the Commercial Operation Date and throughout the Settlement Term of this Agreement, no later than the end of the month immediately following the month for which information is being reported, Seller shall provide Buyer with a monthly report for the prior month regarding material data pertaining to the operation of the Facility in the form of Exhibit 19, the form of which may be reasonably revised by Buyer from time to time (the "Operations Report"). Each Operations Report shall include any information provided in a similar report delivered pursuant to the Facility's power purchase agreement, and including, but not limited to, the following information for the Facility in such month: (i) A description of any Outages or other performance issues or curtailments in the prior month; (ii) Updated forecast (hourly) of Facility Energy for the immediately succeeding twelve (12) month period, or shorter period ending through the end of the Term if applicable; and (iii) A description of any issues that could materially impact (ii).

3.2.3 Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the acquisition, design, financing, engineering, construction and installation of the Facility.

3.2.4 Monitor the status of the acquisition, Premises, land leasing, design, financing, engineering, construction and installation of the Facility and the performance of the contractors constructing the Facility.

3.2.5 Witness initial performance tests and other tests and review the results thereof; with Seller to make best efforts to provide Idaho Power five (5) Business Days' advance written notice of each such major test. Seller shall provide Idaho Power with at least two

(2) Business Days prior written notice of each such test, with the understanding that if the performance of such test is dependent on the presence of sufficient solar insolation or other variables beyond the control of Seller, the date of such test may be postponed if, on the date specified in the related notice, there is insufficient solar insolation or other circumstances beyond the control of Seller that prevent the performance of such test on the scheduled date.

3.2.6 Perform such examinations, inspections, and quality surveillance as, in Idaho Power's reasonable judgment, are appropriate and advisable to determine that the Facility has been properly commissioned and Commercial Operation and Final Completion have been achieved.

With respect to Idaho Power's right to monitor under this Section 3.2, (i) Idaho Power is under no obligation to exercise any of these monitoring rights, (ii) such monitoring shall occur subject to reasonable rules developed by Seller regarding Facility construction, access, health, safety, and environmental requirements, and (iii) Idaho Power shall have no liability to Seller for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Idaho Power with respect to the Facility or any contractor. Any review or monitoring of the Facility conducted by Idaho Power hereunder shall be performed in a manner that does not impede, hinder, postpone, or delay Seller or its contractors in their performance of the engineering, construction, design or testing of the Facility. Idaho Power shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 3.2, which representatives shall have authority to act for Idaho Power in all technical matters under this Section 3.2 as authorized by Idaho Power but not to amend or modify any provision hereof. A Construction Progress Report and Operations Report delivered pursuant to this Section 3.2 shall not constitute notice for any purpose under this Agreement, including with respect to any fact, circumstance, request, issue, dispute or matter included in such report. Seller does not herein grant Idaho Power the right to review, comment on or approve of the terms or conditions of any contract or negotiation between Seller and a third party, the terms and conditions of each such contract or negotiation being confidential and to be determined by Seller in its sole discretion. Conversely, nothing in this Agreement shall be construed to require Idaho Power to review, comment on, or approve of any contract between Seller and a third party and any such review, comment or approval by Idaho Power shall not constitute a waiver by Idaho Power or any of Seller's obligations under this Agreement or create any obligation or liability for Idaho Power.

SECTION 4
TERM AND COMMERCIAL OPERATION DATE

4.1 Term. This Agreement shall become effective on the Effective Date and, subject to earlier termination as provided in this Agreement, shall continue in full force and effect for a period of _____ Contract Years from the Commercial Operation Date (the "Term").

4.2 Commercial Operation Date. Seller will in good faith using commercially reasonable efforts seek to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date. The Commercial Operation Date shall occur after all the following conditions

have been satisfied.

4.2.1 Idaho Power has received the Default Security, as applicable.

4.2.2 Seller shall notify Buyer of the Seller's proposed Commercial Operation Date, in written form no later than five (5) Business Days prior to the proposed Commercial Operation Date.

4.2.3 Seller shall provide to Idaho Power a certificate from a Licensed Professional Engineer licensed in the state of Idaho addressed to Idaho Power stating that Seller has (a) the Required Facility Documents including the material permits, consents and agreements necessary to operate and maintain the Facility and (b) obtained or entered into all Permits and Required Facility Documents. Seller must provide copies of any or all Required Facility Documents requested by Idaho Power.

4.2.4 Seller shall provide Idaho Power with documentation showing that Seller has obtained retail electric service for the Facility.

4.2.5 Idaho Power has received a certificate addressed to Idaho Power from a Licensed Professional Engineer stating that, in conformance with the requirements of the Generation Interconnection Agreement: (1) all required Interconnection Facilities have been constructed; (2) all required interconnection tests have been completed; and (3) the Facility is physically interconnected with the System in conformance with the Generation Interconnection Agreement and able to deliver electric energy consistent with the terms of this Agreement.

4.2.6 Idaho Power has received, addressed to Idaho Power from a Licensed Professional Engineer, an executed Engineer's Certification of Design & Construction Adequacy and an Engineer's Certification of Operations and Maintenance (O&M) Policy. These certificates will be in the form specified in Exhibit 11 but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.

4.2.7 Idaho Power has received an opinion from a law firm or attorney licensed in the State of Idaho stating, after all appropriate and reasonable inquiry (1) Seller has obtained or entered into all Required Facility Documents; and (2) neither Seller nor the Facility are in violation of or subject to any liability under any Requirements of Law.

4.2.8 Idaho Power has received a certificate addressed to Idaho Power from an authorized officer of Seller (1) stating that Seller has completed all of its obligations under the Generation Interconnection Agreement that would permit Idaho Power to designate the Facility as a Network Resource and receive firm transmission service from the Transmission Provider in sufficient capacity to meet or exceed the Maximum Delivery Rate; and (2) that includes a document from the Transmission Provider confirming each of the items to which the Seller certifies in (1) above.

4.2.9 Seller has satisfied its obligation to pay for any required Network Upgrades as a Network Resource pursuant to the Generation Interconnection Agreement (as those terms are defined in the Generation Interconnection Agreement).

4.2.10 Seller shall submit written proof to the Buyer of all insurance required in Section 14.

4.2.11 Commercial Operation Date Notice. Seller shall provide written notice to Idaho Power stating when Seller believes that the Facility has achieved Commercial Operation and its Nameplate Capacity Rating accompanied by the certificates and opinions described above. Seller shall ensure that the Facility does not achieve Commercial Operation in any Calendar Quarter prior to the Calendar Quarter in which the Scheduled Commercial Operation Date falls.

4.2.12 Idaho Power shall have ten (10) Business Days after receipt of such written notice from Seller either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what Idaho Power reasonably believes has not been satisfied. If, within such ten (10) Business Day period, Idaho Power does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's written notice shall be the Commercial Operation Date. If Idaho Power notifies Seller within such ten (10) Business Day period that Idaho Power reasonably believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in Idaho Power's notice to the satisfaction of Idaho Power. In the event Idaho Power provides notice of deficiency with regards to the information submitted to establish the Commercial Operation Date, then the Commercial Operation Date will be the date upon which Seller has addressed the concerns stated in Idaho Power's notice to Idaho Power's reasonable satisfaction.

4.2.13 If Commercial Operation of the Facility is achieved based on less than one hundred percent (100%) of the Expected Nameplate Capacity Rating, then Seller may inform Idaho Power, by written notice received no later than ten (10) Business Days after the Commercial Operation Date, that Seller intends to bring the Facility above the Required Percentage up to but not exceeding one hundred percent (100%) of the Expected Nameplate Capacity Rating. Such notice from Seller shall include a Final Completion Schedule. After providing that notice, Seller shall cause the Facility to achieve Final Completion on or before the ninetieth (90^{th}) day after the Commercial Operation Date.

4.2.14 If Commercial Operation is achieved at less than one hundred percent (100%) of the Expected Nameplate Capacity Rating and Seller informs Idaho Power that Seller intends to bring the Facility to one hundred percent (100%) of the Expected Nameplate Capacity Rating, Seller shall provide Idaho Power, no later than ten (10) Business Days after the Commercial Operation Date, with the Final Completion Schedule. All items on the Final Completion Schedule must be completed on or before the ninetieth (90^{th}) day after the Commercial Operation Date. If a Final Completion Schedule is not provided to Idaho Power within ten (10) Business Days following the Commercial Operation Date,

then the date of Final Completion shall be the same as the Commercial Operation Date.

The conditions set forth in this Section are to be used solely for the purposes of determining when the Facility has achieved a First Generation Date and are not intended to affect in any way when the Facility is deemed to have been "placed in service" for tax treatment purposes.

With respect to Sections 4.2.3 through 4.2.6 above, the certificate or opinion provided to Idaho Power must come from a Licensed Professional Engineer or, in the case of Section 4.2.7 above, an attorney that is not an employee of Seller (or any Affiliate) and has no financial interest in the Facility.

Notwithstanding the foregoing, the date for achieving each of the foregoing items shall be extended on a day for day basis for any delay due solely to Idaho Power's delay in taking, or failure to take, any action required of it hereunder in breach of this Agreement.

Without limiting Seller's obligations under this Agreement, none of the following shall excuse in any respect Seller's failure to comply with any and all provisions in this Section 3, no matter what the source or reason, unless an accepted event of Force Majeure.

These Commercial Operation Date requirements are to be used solely for purposes of determining when the Facility has achieved its Commercial Operation Date. They are not intended to affect in any way when the Facility is deemed to have been "placed in service" for purposes of tax treatment eligibility or purposes.

4.3 Seller covenants and agrees that before it delivers Test Energy to Buyer, it shall ensure that it has done all of the following, and Buyer shall hold Buyer harmless from and against any failure of Seller to have done so:

4.3.1 All Facility systems necessary for the stable, safe, reliable and consistent operation of the installed Facility are substantially complete, any testing of the installed Facility required pursuant to the Interconnection Agreement(s) and Interconnection Provider documents and equipment supplier requirements have been successfully completed, and the Facility is available for operation in all material respects in accordance with the Requirements of Law.

4.3.2 Seller shall request and obtain written confirmation from the Buyer that all conditions to acceptance of Test Energy have been fulfilled. Such written confirmation shall be provided within a commercially reasonable time following the Seller's request and will not be unreasonably withheld by the Buyer.

4.4 Continuing Obligations. Seller shall provide Buyer with the following during the Term of this Agreement:

4.4.1 At Buyer's request, Seller shall provide evidence that it is in compliance with the insurance requirements set forth in Section 14.

4.4.2 Seller shall maintain compliance and remain in good standing in all requirements of Sections 3 and 4 of this Agreement.

4.5 Commercial Operation Date Delay, Delay Damages and Deficit Damages.

4.5.1 If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to Idaho Power Delay Damages from and after the Scheduled Commercial Operation Date up to, but not including, the date that the Facility achieves Commercial Operation. Delay Damages cease to accrue in the event of termination of this Agreement.

4.5.2 If the Facility does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Idaho Power may terminate this Agreement pursuant to Section 12.

4.5.3 If the Facility achieves Final Completion based on less than one hundred percent (100%) of the Expected Nameplate Capacity Rating, Seller shall pay to Idaho Power Deficit Damages.

After the date of Final Completion, any partially completed Solar Array shall not be part of the Facility, and Seller shall not undertake to add any such partially completed Solar Array or output from such partially completed Solar Array to the Facility without the prior written consent of Idaho Power, such consent will not be unreasonably withheld.

4.6 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that Idaho Power would incur due to Seller's delay in achieving Commercial Operation or failure to reach Final Completion based on one hundred percent (100%) of the Expected Nameplate Capacity Rating would be difficult or impossible to predict with certainty, and (b) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages and Deficit Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. The Parties agree that Delay Damages and Deficit Damages shall be Idaho Power's exclusive remedy for a delay in achieving Commercial Operation or failure to reach Final Completion based on one hundred percent (100%) of the Expected Nameplate Capacity Rating and believe that Delay Damages and Deficit Damages fairly represent actual damages. Subject to the foregoing sentence, this Section 4.5 shall not limit Seller's termination rights or the amount of damages payable to Idaho Power if this Agreement is terminated as a result of Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Any such termination damages shall be determined in accordance with Section 12.4.

4.7 Damages Invoicing. By the tenth (10^{th}) day following the end of the calendar month in which Delay Damages begin to accrue or Deficit Damages are incurred, as applicable, and continuing on the tenth (10^{th}) day of each calendar month during the period in which Delay Damages accrue (and the following months, if applicable), Idaho Power shall deliver to Seller an invoice showing Idaho Power's computation of such damages and any amount due Idaho Power in respect thereof for the preceding calendar month. No later than ten (10) days after receiving

such an invoice and subject to Sections 11.2 and 11.3, Seller shall pay to Idaho Power, by wire transfer of immediately available funds to an account specified in writing by Idaho Power or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

4.8 Tax Credits. Seller shall notify Idaho Power whether Seller has elected to claim the ITC within thirty (30) days following the date that Seller (or Seller's Affiliate, on a consolidated basis) files its first tax return after the Commercial Operation Date. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive the ITC or other Tax Credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Net Output, shall be effective regardless of whether the sale of Output or Net Output from the Facility is eligible for, or receives, the ITC or other Tax Credits during the Term.

SECTION 5
DELIVERIES OF NET OUTPUT AND GREEN TAGS

5.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell and make available to Idaho Power, and Idaho Power shall purchase and receive (a) the entire Net Output from the Facility at the Point of Delivery, and (b) all Green Tags associated with the Output or otherwise resulting from the generation of energy by the Facility. Idaho Power shall be under no obligation to make any purchase hereunder other than Net Output and all Green Tags, as described above. Idaho Power shall not be obligated to purchase, receive or pay for Output (or Green Tags associated with such Output) that is not delivered to the Point of Delivery. In addition, during the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Idaho Power, and Idaho Power shall purchase and receive, all Net Output and Green Tags from the Facility as Test Energy at the price specified in Section 6.1.1.

5.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, energy, Green Tags or Capacity Rights from the Facility to any party other than Idaho Power; provided, however, that this restriction shall not apply during periods when Idaho Power is in default hereof because it has failed to accept the Net Output or Green Tags delivered by Seller to Buyer as required hereunder .

5.3 Title and Risk of Loss of Net Output. Seller shall deliver Net Output, Green Tags and Capacity Rights to Idaho Power free and clear of all liens, claims and encumbrances. Title to and risk of loss of all Net Output shall transfer from Seller to Idaho Power upon its delivery to Idaho Power at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by, all Output up to and at the Point of Delivery. Idaho Power shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Output after the Point of Delivery.

5.4 Curtailment.

5.4.1 Non-Compensable Curtailment. Idaho Power shall not be obligated to purchase, receive, pay for, or pay any damages associated with, Net Output if such Net Output is not delivered to the System or Point of Delivery for any of the following reasons: (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generator Interconnection Agreement, (b) the Balancing Authority, Reliability Coordinator, Transmission Provider or Network Service Provider directs a general curtailment, reduction, or redispatch of generation in the area, (which would include the Net Output) for any reason, including to operate within system limitations or otherwise, or a curtailment or reduction of generation under the terms of any Limited Operations Study or Generator Interconnection Agreement for the Facility, but excluding curtailment of purchases for general economic reasons, even if and no matter how such curtailment or redispatch directive is carried out by Idaho Power, which may fulfill such directive by acting in its sole discretion;, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output (each of the foregoing a "Non- Compensable Curtailment").

A curtailment shall be a Non-Compensable Curtailment if Seller is requested and able to generate Net Output and deliver such Net Output to Idaho Power at a location other than the Point of Delivery, and Idaho Power (i) accepts and pays for such Net Output as if it were delivered to the Point of Delivery and (ii) reimburses Seller for any incremental costs incurred by Seller to deliver such Net Output to such other location.

Non-Compensable Curtailments do not include curtailments for general economic reasons (which Idaho Power would pay for pursuant to Section 12.2.2), nor do they include curtailments or instructions to reduce output based on economics directed by the Market Operator, or by an Independent System Operator ("ISO") or an RTO, if the Facility or Buyer joins an ISO or RTO during the Term.

5.4.2 Compensable Curtailment. Idaho Power shall pay Seller for Compensable Curtailment Energy as set forth in Section 6.1.3.

5.5 Idaho Power as Purchaser. Seller acknowledges that Idaho Power, acting in its capacity as purchaser under this Agreement, has no responsibility for or control over Idaho Power Transmission or any successor Transmission Provider.

5.6 Green Tags.

5.6.1 Title. Idaho Power will be granted ownership of 100% of the Green Tags and Environmental Attributes associated with the Facility. Title to 100% of the Green Tags and Environmental Attributes shall pass from Seller to Idaho Power immediately upon the generation of the Output at the Facility that gives rise to such Green Tags or Environmental Attributes. Idaho Power's title to 100% of the Environmental Attributes

and Green Tags shall expire at the end of the term of this Agreement with respect to Output generated after the end of the term of this Agreement, unless the Parties agree to extend in future agreements. If after the Effective Date and during the term of this Agreement any additional Green Tags, Environmental Attributes or similar environmental value is created by legislation, regulation, or any other action, including but not limited to, carbon credits and carbon offsets, Idaho Power shall be granted ownership of 100% of these additional Green Tags and Environmental Attributes and environmental values that are associated with the Net Output delivered by the Seller to Idaho Power. Seller shall use prudent and commercially reasonable efforts to ensure that any operations of the Facility do not jeopardize the current or future Green Tags or Environmental Attribute status of this solar generation Facility. Seller will deliver all of the Green Tags and Environmental Attributes generated by the Facility during the Term, without substitution of Green Tags or Environmental Attributes from any other source.

5.6.2 Documentation. At least sixty (60) days prior to the First Generation Date, the Parties shall mutually cooperate to enable Idaho Power's Green Tags and Environmental Attributes from this Facility to be placed into the WREGIS account designated by Idaho Power's or any other Green Tag or Environment Attribute accounting and tracking system selected by the Idaho Power. The Seller at the Seller's sole expense will be responsible to establish and maintain the Seller's WREGIS or other Green Tag and Environmental Attribute account and/or system that enables the creation of the Environmental Attribute certificates associated with this Facility and the transfer of 100% of the Green Tags and Environmental Attributes to Idaho Power for the Term of this Agreement. If the Green Tag or Environmental Attribute accounting and tracking system initially selected by Idaho Power is materially altered or discontinued during the Term of this Agreement, the Parties shall cooperate to identify an appropriate alternative Green Tag or Environmental Attribute accounting and tracking process and enable the Green Tag or Environmental Attributes be processed through this alternative method.

5.6.3 Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller shall, at its sole expense, effectuate the transfer of WREGIS Certificates to Idaho Power's WREGIS account in accordance with WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with Idaho Power in a form similar to that in Exhibit 20 or elect to retain a third-party or act as its own WREGIS-defined Qualified Reporting Entity; provided, however, that if the Facility is in Idaho Power's balancing authority area, Seller must enter into a Qualified Reporting Entity Services Agreement with Idaho Power in the form of Exhibit 20 and not do so with any third party. Unless the failure to deliver WREGIS Certificates was caused by action of Idaho Power not acting in its capacity as Qualified Reporting Entity under the Qualified Reporting Entity Services Agreement, Idaho Power shall be entitled to a refund of the Green Tags Price Component of Green Tags associated with any Net Output for which WREGIS Certificates are not delivered, and shall not transfer the affected Green Tags back to Seller, provided that Seller shall have thirty (30) days after the conclusion of any applicable WREGIS dispute

resolution process to correct any error and deliver such WREGIS Certificates to Idaho Power or provide such refund payment. Seller shall promptly provide Idaho Power copies of all documentation it submits to WREGIS. If WREGIS changes the WREGIS Operating Rules after the execution of this Agreement or applies the WREGIS Operating Rules in a manner inconsistent with this Agreement after the execution of this Agreement, the Parties will promptly cooperate as reasonably required to cause and enable Seller to deliver WREGIS Certificates associated with the Output to Idaho Power's WREGIS account. Further, in the event of the promulgation of a scheme involving Green Tags administered by a Governmental Authority, upon notification by such Governmental Authority that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded.

5.6.4 If Idaho Power requests additional Environmental Attribute certifications beyond what is provided by the WREGIS process the Seller shall use its best efforts to obtain any Environmental Attribute certifications required by Idaho Power for those Environmental Attributes delivered to Idaho Power from the Seller. If the Seller incurs cost, as a result of Idaho Power's request, and if the additional certification provides benefits to both Parties, the Parties shall share the costs in proportion to the additional benefits obtained. If Idaho Power elects to obtain its own certifications, then Seller shall fully cooperate with Idaho Power in obtaining such certification.

5.6.5 Publicity. Seller shall not make any public statement or report under any program that any of the Green Tags purchased by Idaho Power hereunder belong to any person other than Idaho Power. Seller shall reasonably cooperate in any registration by Idaho Power of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which Idaho Power may wish to register or maintained registered the Facility by providing copies of all such information as Idaho Power reasonably requires for such registration.

5.6.6 Renewable Claims. Seller shall not report in any public communication, or under any program, that any of the Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer. Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Environmental Attributes for Buyer to own, hold and transfer, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Environmental Attributes. Seller will not claim the Green Tags, Environmental Attributes or other "renewable energy," "green energy," "clean energy" or similar attributes of the Output or the Facility as belonging to the Seller or any Seller Affiliate or to any person or entity other than Idaho Power. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. To the extent that any such public communication is allowed under this Agreement, in any public communication concerning the Facility, Facility Energy or the Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register

62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Environmental Attributes, or the Facility. Seller covenants not to collect for its own benefit any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with Facility Energy or based upon or relating to Facility Energy.

5.7 Purchase and Sale of Capacity Rights. For and in consideration of Idaho Power's agreement to purchase from Seller the Facility's Net Output and Green Tags on the terms and conditions set forth herein, Seller transfers to Idaho Power, and Idaho Power accepts from Seller, all right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term.

5.8 Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person or entity the Capacity Rights, if any. During the Term, Seller shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than Idaho Power. Idaho Power may at its own risk and expense report to any person or entity that Capacity Rights exclusively belong to it.

5.9 Authority to Make Sales. Seller covenants that during the Term it will maintain all required regulatory authority to make wholesale sales from the Facility to Idaho Power.

5.10 Further Assurances. At Idaho Power's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Net Output or Capacity Rights, if any, to Idaho Power or Green Tags to Customer.

SECTION 6
CONTRACT PRICE; COSTS

6.1 Contract Price includes Green Tags and Capacity Rights. Idaho Power shall pay Seller the prices stated below for all deliveries of Net Output, Green Tags and Capacity Rights, up to the Maximum Delivery Rate. The price provided for Test Energy in Section 6.1.1 and the Contract Price provided for in Section 6.1.2, and the Compensable Curtailment Price provided for in Section 6.1.3 include the consideration to be paid by Idaho Power to Seller for all Net Output, Green Tags, Capacity Rights and Test Energy, respectively, and Seller shall not be entitled to any compensation over and above the Contract Price or the Test Energy price, as the case may be, for the Green Tags and Capacity Rights associated therewith.

6.1.1 Test Energy and Net Output Before Commercial Operation Date. Between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver to Idaho Power all Test Energy and Net Output, provided that Test Energy and Net Output delivery to Idaho Power shall not commence more than sixty (60) days prior to the Scheduled Commercial Operation Date. Idaho Power shall pay Seller for such Test

Energy and Net Output delivered at the Point of Delivery, an amount per MWh equal to eighty-five percent (85%) of the Market Price Index for the applicable hour on the applicable day in the applicable month, provided, however, that Seller's right to receive payment for such Test Energy and Net Output is subject to Idaho Power's right of offset under Section 11.2 for, among other things, payment by Seller of any Delay Damages owed to Idaho Power by Seller pursuant to Section 4.4 and Section 9.1.2.

6.1.2 Net Output After Commercial Operation Date. For the period beginning on the Commercial Operation Date and thereafter during the Term, Idaho Power shall pay to Seller the Contract Price per MWh of Net Output delivered to the Point of Delivery, as specified in Exhibit 4.

6.1.3 Compensable Curtailment. If, during the period beginning on the Commercial Operation Date and thereafter during the Term, Net Output is curtailed by Idaho Power and such curtailment is not included as a Non-Compensable Curtailment ("Compensable Curtailment Energy"), then Idaho Power shall pay to Seller the Compensable Curtailment Price for the Compensable Curtailment Energy, as determined below.

6.1.3.1 The Parties will calculate the quantity of Compensable Curtailment Energy by determining the Potential Net Output (A) during those periods of time when the Facility is on GOLC and the GOLC Set-Point is set at a level that will not allow the entire Nameplate Capacity Rating to be deliverable by determining the difference between Potential Net Output and the delivered Net Output, and (B) during those periods of time when the Facility is not on GOLC or the GOLC Set-Point is set at a level that will allow the Nameplate Capacity Rating to be deliverable by determining the amount that would have been available for delivery had its generation not been so curtailed. Compensable Curtailment Energy shall equal the number of kWh represented by the Potential Net Output less the Net Output actually delivered to the Point of Delivery.

6.1.3.2 Idaho Power will pay Seller the Contract Price for each kWh of Compensable Curtailment Energy, net of any Non-Compensable Curtailments (the "Compensable Curtailment Price").

6.1.3.3 For purposes of determining Compensable Curtailment Energy, the amount of Potential Net Output at any given time will be calculated using Idaho Power's solar forecasting vendor/tool. 6.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, Transmission Service, and transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider and Transmission Provider for the Interconnection Facilities. Idaho Power shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties. Without limiting the generality of the foregoing, Seller, in accordance with the Generation Interconnection Agreement, shall bear all costs associated with the modifications to Interconnection Facilities or the System (including system upgrades) caused by or related to (a) the interconnection of the Facility with the System and (b) any increase in generating capacity of the Facility.

6.3 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself.

6.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse Idaho Power for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Net Output, Capacity Rights or Green Tags up to and including, but not beyond, the Point of Delivery, regardless of whether such taxes are imposed on Idaho Power or Seller under Requirements of Law. Idaho Power shall pay or cause to be paid when due all such taxes imposed or levied by any Governmental Authority on the Net Output, Capacity Rights or Green Tags beyond the Point of Delivery, regardless of whether such taxes are imposed on Idaho Power or Seller under Requirements of Law. The Contract Price shall not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back. In the event any taxes are imposed on a Party for which the other Party is responsible hereunder, the Party on which the taxes are imposed shall promptly provide the other Party written notice thereof and such other information as such Party may reasonably request with respect to any such taxes. Seller shall be responsible for any and all sun and light severance taxes.

6.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof and subject to Section 6.4, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or Environmental Attributes.

6.6 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person or entity seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group. Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008).

SECTION 7
OPERATION AND CONTROL

7.1 As-Built Supplement. Within thirty (30) days of completion of construction of the Facility, Seller shall provide Idaho Power the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to Exhibit 16 when it has been reviewed and approved by Idaho Power, which approval shall not be unreasonably withheld or delayed. If the proposed As-built Supplement does not accurately describe the Facility as actually built or is otherwise defective as to form in any material respect, Idaho Power may within fifteen (15) days after receiving the proposed As-built Supplement give Seller a notice describing what Idaho Power wishes to correct. If Idaho Power does not give Seller such a notice within the fifteen (15) day period, the As-built Supplement shall be deemed approved. If Idaho Power provides a timely notice requiring corrections, Seller shall in good faith cooperate with Idaho Power to revise the As-built Supplement to address Idaho Power's concerns. Notwithstanding the foregoing, Idaho Power shall have no right to require Seller to relocate, modify or otherwise change in any respect any aspect of the Facility as actually built.

7.2 Standard of Facility Operation.

7.2.1 General. At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (a) the applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors to the functions thereof; (b) the Permits and Required Facility Documents; (c) the Generation Interconnection Agreement; (d) all Requirements of Law; (e) the requirements hereof; and (f) Prudent Electrical Practice. Seller will have no claims against Idaho Power under this Agreement with respect to the provision of station service.

7.2.2 Qualified Operator. From and after the Commercial Operation Date, Seller will cause the Project to be operated and maintained by a Qualified Operator. Seller shall provide Idaho Power thirty (30) days prior written notice of any proposed change in the Qualified Operator of the Facility.

7.2.3 Fines and Penalties.

7.2.3.1 Without limiting a Party's rights under Section 7.2.3.2, each Party shall pay all fines and penalties incurred by such Party on account of noncompliance by such Party with Requirements of Law in respect to this Agreement, except where such fines and penalties are being contested in good faith through appropriate proceedings.

7.2.3.2 If fines, penalties, or legal costs are assessed against or incurred by either Party (the "Indemnified Party") on account of any action by any Governmental Authority due to noncompliance by the other Party (the "Indemnifying Party") with any Requirements of Law or the provisions hereof, or if the performance of the Indemnifying Party is delayed or stopped by order of any Governmental Authority due to the Indemnifying Party's noncompliance with any Requirements of Law, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party against any and all losses, liabilities, damages, and claims suffered or incurred by the Indemnified Party as a result thereof. Without limiting the generality of the foregoing, the Indemnifying Party shall reimburse the Indemnified Party for all fees, damages, or penalties imposed on the Indemnified Party by any Governmental Authority, other person or entity or to other utilities for violations to the extent caused by a default by the Indemnifying Party or a failure of performance by the Indemnifying Party hereunder.

7.3 Interconnection. Seller shall be responsible for the costs and expenses associated with obtaining from the Transmission Provider Network Resource interconnection service for the Facility at its Nameplate Capacity Rating at the Point of Delivery. Seller shall have no claims hereunder against Idaho Power, acting in its capacity as purchaser, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise.

7.4 Coordination with System. Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System.

7.5 Outages.

7.5.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during daylight hours (sun up to sunset) during any portion of the months of November, December, January, February, June, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement. Seller shall provide Idaho Power with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it, only to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior

written approval of Idaho Power, which approval shall not be unreasonably withheld or delayed.

7.5.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Idaho Power in writing of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which Idaho Power may reasonably consent in light of then-existing solar conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Idaho Power; provided, however, that Seller shall take all reasonable measures consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the daylight hours of the following periods: November, December, January, February, June 15 through June 30, July, August, and September 1 through September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Idaho Power notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. Idaho Power shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify Idaho Power of any subsequent changes in generation capacity available to Idaho Power as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages. Notwithstanding anything in this Section 7.5.2 to the contrary, Seller may schedule a Maintenance Outage at any time and without the requirement to notify Idaho Power five (5) days in advance during conditions of low solar insolation, but shall notify Idaho Power promptly after Seller decides to schedule such Maintenance Outage.

7.5.3 Forced Outages. Seller shall promptly provide to Idaho Power an oral report, via telephone to a number specified by Idaho Power (or other method approved by Idaho Power), of any Forced Outage resulting in more than ten percent (10%) of the Nameplate Capacity Rating of the Facility being unavailable. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise Idaho Power of changed circumstances. As soon as practicable, the oral report shall be confirmed in writing by notice to Idaho Power. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

7.5.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Idaho Power, via telephone to a number specified by Idaho Power (or other method approved by Idaho Power), of any major limitations, restrictions, deratings or

outages known to Seller affecting the Facility for the following day (except curtailments of Net Output at the direction of Idaho Power) and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than five percent (5%) of the Nameplate Capacity Rating of the Facility.

7.5.5 Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly net output set forth on Exhibit 4 takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility.

7.6 Scheduling.

7.6.1 Cooperation and Standards. With respect to any and all scheduling requirements hereunder, (a) Seller shall cooperate with Idaho Power with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder. Each Party shall comply with the applicable variable resource standards and criteria of any applicable Electric System Authority.

7.6.2 Schedule Coordination. If, as a result hereof, Idaho Power is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement, due to Seller's lack of standing as a "scheduling coordinator" or other RTO recognized designation, qualification or otherwise, then Seller shall acquire such RTO recognized standing (or shall contract with a third party who has such RTO recognized standing) such that Idaho Power is no longer responsible for Seller's performance under the Generation Interconnection Agreement or RTO requirement.

7.7 Forecasting.

7.7.1 Solar Energy Production Forecast. "Solar Energy Production Forecast" means the Idaho Power administered solar forecasting model for all solar projects that are under contract and online providing energy to Idaho Power. The Seller shall be responsible for an allocated portion of the total costs of the forecasting model and to provide solar irradiation and weather data specified in Section 7.7.2.

7.7.2 Solar Energy Production Forecast Cost and Data. Seller shall contribute to the cost of the Solar Energy Production Forecasting. The Facility's share of Solar Energy Production Forecasting is determined as specified below. Seller's payments for the cost of the Solar Energy Production Forecasting in any Contract Year will not be greater than 0.1% of the total energy payments made to Seller by Idaho Power hereunder during the previous Contract Year.

a. For every month of this Agreement beginning with the first full month after the First Energy Date as specified in this Agreement, the Solar Energy Production Forecasting Monthly Cost Allocation (MCA) will be due and payable by the Seller. Any Solar Energy Production Forecasting Monthly Cost Allocations

(MCA) that are not reimbursed to Idaho Power shall be deducted from energy payments to the Seller.

b. During the first Contract Year, as the value of the 0.1% cap of the total energy payments to be made to Seller by Idaho Power hereunder will not be known until the first Contract Year is complete, Idaho Power will deduct the Facility's calculated share of the Solar Energy Production Forecasting costs specified in item d each month during the first Contract Year and subsequently refund any overpayment (payments that exceed the cap) in equal monthly amounts over the ensuing Contract Year.

c. The cost allocation formula described below will be reviewed and revised if necessary on the last day of any month in which the cumulative MW nameplate of Solar projects having IPUC approved agreements to deliver energy to Idaho Power has been revised by an action of the IPUC.

d. The monthly cost allocation will be based upon the following formula:

Where: **Total MW (TMW)** is equal to the total Nameplate Capacity rating of all solar projects that are under contract and online providing energy to Idaho Power Company.

Facility MW (FMW) is equal to the Expected Nameplate Capacity rating of this Facility as specified within this Agreement.

Annual Solar Energy Production Forecasting Cost (AFCost) is equal to the total annual cost Idaho Power incurs to provide Solar Energy Production Forecasting. Idaho Power will estimate the AFCost for the current year based upon the previous year's cost and expected costs for the current year. At year-end, Idaho Power will compare the actual costs to the estimated costs and any differences between the estimated AFCost and the actual AFCost will be included in the next year's AFCost.

Annual Cost Allocation (ACA) = AFCost X (FMW/TMW)

And

Monthly Cost Allocation (MCA) = ACA / 12

e. The Solar Energy Production Forecasting Monthly Cost Allocation (MCA) is due and payable to Idaho Power. The MCA will first be netted against any monthly energy payments owed to the Seller. If the netting of the MCA against the monthly energy payments results in a balance being due Idaho Power, the Facility shall pay this amount within fifteen (15) days of the date of the payment invoice.

7.7.2.1 The Seller shall also provide solar irradiation and weather data specific to the Facility's physical location to Idaho Power via real time telemetry in a form acceptable to Idaho Power. The specific equipment and location of this equipment

shall be specified in the GIA. This data will provided at 10 second intervals and will consist of:

a.) Global Horizontal Irradiance
b.) Plane of Array
c.) Temperature
d.) Wind Speed and Direction

7.8 No Increase in Nameplate Capacity Rating. Without limiting Section 8 or any restrictions herein on Nameplate Capacity Rating, Seller may not increase the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate through any means, including replacement or modification of Facility equipment or related infrastructure, without consent of Idaho Power, which Idaho Power may grant or withhold in its sole and absolute discretion.

7.9 Electronic Communications.

7.9.1 GOLC.

7.9.1.1 Beginning on the Commercial Operation Date, Idaho Power will dispatch Facility through its GOLC system installed by Seller.

Idaho Power may notify Seller, by telephonic communication or through use of the GOLC Set-Point, to curtail the delivery of Net Output to Idaho Power from the Facility and to the Point of Delivery, pursuant to Section 5.4, and Seller shall promptly comply with such notification.

The GOLC Set-Point is calculated by the Transmission Provider and communicated electronically through the SCADA system. Seller shall ensure that, throughout the Term, the SCADA signal is capable of functioning on all GOLC Set-Points within the margin of error specified in the Facility control system manufacturer's set point margin of error.

Unless otherwise directed by Idaho Power, Seller shall ensure that the Facility GOLC is in "Remote" set-point control during normal operations.

7.9.2 Telemetering. Seller shall during the Term provide telemetering equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Generation Interconnection Agreement and to Idaho Power on a real-time basis, and will operate such equipment when requested by Idaho Power to indicate instantaneous MW output at the Point of Delivery.

Commencing on the date of initial delivery of Test Energy, Seller shall also transmit or cause to be transmitted to or make accessible to Idaho Power any other data from the Facility that Seller receives on a real time basis, including meteorological data, solar

insolation data and Net Output data. Such real time data shall be provided to or be made accessible to Idaho Power on the same basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Idaho Power shall also receive the data in four second intervals). Seller must provide Idaho Power access to Seller's web-based performance monitoring system.

7.9.3 Transmission Provider Consent. Seller shall execute a consent, in the form required by Transmission Provider, to provide that Idaho Power can read the meter and receive any and all data from the Transmission Provider relating to transmission of Net Output or other matters relating to the Facility without the need for further consent from Seller.

7.9.4 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Idaho Power and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

7.10 Reports and Records.

7.10.1 Monthly Reports. Commencing on the Commercial Operation Date, within thirty (30) days after the end of each calendar month during the Term (each, a "Reporting Month"), Seller shall provide to Idaho Power a report in electronic format, which report shall include (a) summaries of the Facility's solar insolation and actual and predicted output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Idaho Power may from time to time reasonably request (including historical solar insolation data for the Facility).

7.10.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the Commercial Operation Date. Seller shall provide Idaho Power with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

7.10.3 Other Information to be Provided to Idaho Power. Seller shall provide to Idaho Power the following information concerning the Facility:

7.10.3.1 Upon the request of Idaho Power, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

7.10.3.2 A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of Idaho Power any of the technical data obtained in connection with such maintenance;

7.10.3.3 Before Final Completion, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month;

7.10.3.4 Before Final Completion, a monthly report containing a brief summary of construction activity contemplated for the next calendar month;

7.10.3.5 From and after the Commercial Operation Date, a monthly report detailing the availability of the Facility; and

7.10.3.6 At any time from the Effective Date, one year's advance notice of the termination or expiration of any material agreement, including Leases, pursuant to which the Facility or any material equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any land lease. In the event Seller has less than one year's advance notice of such termination or expiration, Seller shall provide the notice contemplated by this Section to Idaho Power within fifteen (15) Business Days of Seller obtaining knowledge of the termination or expiration.

7.10.4 Information to Governmental Authorities. Seller shall, promptly upon written request from Idaho Power, provide Idaho Power with all data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required by Idaho Power or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to Idaho Power copies of all submittals to Governmental Authorities or Electric System Authorities directed by Idaho Power and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use best efforts to provide this information to Idaho Power with sufficient advance written notice to enable Idaho Power to review such information and meet any submission deadlines imposed by the requesting organization or entity. Idaho Power shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of $10,000 per year, if any, incurred in connection with Idaho Power's requests for information under this Section 7.10.4.

7.10.5 Data Request. Seller shall, promptly upon written request from Idaho Power, provide Idaho Power with data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any Idaho Power rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to Idaho Power sufficiently in advance to enable Idaho Power to review it and meet any submission deadlines. Idaho Power shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of $10,000 per year, if any, incurred in connection with Idaho Power's requests for information under this Section 7.10.5.

7.10.6 Documents to Governmental Authorities. After sending or filing any statement,

application, and report or any document with any Governmental Authority or Electric System Authority relating to operation and maintenance of the Facility, Seller shall, within five (5) Business Days of such submission or filing, provide to Idaho Power a copy of the same.

7.10.7 Environmental Information. Seller shall, promptly upon written request from Idaho Power, provide Idaho Power with all data reasonably requested by Idaho Power relating to environmental information under the Required Facility Documents. Seller shall further provide Idaho Power with information relating to environmental impact mitigation measures it is taking in connection with the Facility's construction or operation that are required by any Governmental Authority. Idaho Power shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of $10,000 per year, if any, incurred in connection with Idaho Power's requests for the foregoing information under this Section 7.10.7. As soon as it is known to Seller, Seller shall disclose to Idaho Power, the extent of any material violation of any environmental laws or regulations arising out of the construction, operation, or maintenance of the Facility, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises.

7.10.8 Operational Reports. Seller shall provide Idaho Power monthly operational reports in a form and substance reasonably acceptable to Idaho Power, and Seller shall, promptly upon written request from Idaho Power, provide Idaho Power with all operational data requested by Idaho Power with respect to the performance of the Facility and delivery of Net Output, Green Tags or Capacity Rights therefrom.

7.10.9 Notice of Material Adverse Events. Seller shall promptly notify Idaho Power of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided herein. Seller shall promptly disclose to Buyer (but in no case later than two (2) Business Days after Seller obtains actual knowledge) any violation of any Applicable Laws arising out of the construction or operation of the Facility by Seller, its Affiliates or any contractor of any of them, including any Qualified Operator, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to the Facility, if such violation, action or proceeding adversely affects or could reasonably be expected to adversely affect the construction or operation of the Facility or the commercial reputation of Buyer or any of their respective Affiliates.

7.10.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, or proceeding before any court or Governmental Authority against Seller or its members with respect to this Agreement or

the transactions contemplated hereunder, Seller shall, within ten (10) days of such notice or knowledge, give written notice to Idaho Power of the same. Following its receipt of written notice or actual knowledge of the commencement of any action, suit or proceeding before any court or Governmental Authority against Seller, its members or any Affiliate, the effect of which would materially and adversely affect Seller's performance of its obligations hereunder, Seller shall, within ten (10) days of such notice or knowledge, give notice to Idaho Power of the same.

7.10.11 Additional Information. Seller shall provide to Idaho Power such other information respecting the condition or operations of Seller, as such pertains to Seller's performance of its obligations hereunder, or the Facility as Idaho Power may, from time to time, reasonably request.

7.10.12 Confidential Treatment. The monthly reports and other information provided to Idaho Power under this Section 7.10 shall be treated as Confidential Business Information if such treatment is requested in writing by Seller at the time the information is provided to Idaho Power, subject to Idaho Power's rights to disclose such information pursuant to Sections 7.10.4, 7.10.5, 7.10.7, 11.5, 25.2 and 25.3, and pursuant to any applicable Requirements of Law. Seller shall have the right to seek confidential treatment of any such information from the Governmental Authority entitled to receive such information.

7.11 Financial and Accounting Information. If Idaho Power or one of its Affiliates determines that, under (i) the Accounting Standards Codification (ASC) 810, Consolidation of Variable Interest Entities, and (ii) Requirements of Law that it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon Idaho Power's written request, sufficient financial and ownership information so that Idaho Power or its Affiliate may confirm whether a variable interest does exist under ASC 810 and Requirements of Law. If Idaho Power or its Affiliate determines that, under ASC 810, it holds a variable interest in Seller, Seller hereby agrees to provide, upon Idaho Power's written request, sufficient financial and other information to Idaho Power or its Affiliate so that Idaho Power may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 and Requirements of Law. Idaho Power shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with Idaho Power's requests for information under this Section 7.11.

7.12 Output Guarantee.

7.12.1 Output Guarantee. Seller is obligated to deliver a quantity of Net Output during each month which is equal to the Output Guarantee. For purposes of this Agreement, "Output Guarantee" for any month means the sum of (i) 90% of the Expected Energy of the Facility for such month, less (ii) any quantities of Output that were not delivered to the Point of Delivery (or accepted by Idaho Power) in such month during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the actual Nameplate Capacity Rating).

7.12.1.2 Seller's Adjustment of Estimated Monthly Net Output Amounts in Exhibit 4 After the Commercial Operation Date. After the Commercial Operation Date, the Seller may revise any future estimated monthly Net Output amounts in Exhibit 4 by providing written notice no later than 5 PM Mountain Time on the 25th day of the month that is prior to the month to be revised. If the 25th day of the month falls on a weekend or holiday, then written notice must be received on the last Business Day prior to the 25th day of the month. For example, if the Seller would like to revise the Estimated Net Output Amount for October, they would need to submit a revised schedule no later than September 25th or the last Business Day prior to September 25th.

a.) This written notice must be provided to Idaho Power in accordance with Section 24.1 or by electronic notice as agreed to by both Parties.

b.) Failure to provide timely written notice of changes to the Estimated Net Output Amounts will be deemed to be an election of no change from the most recently provided monthly Estimated Net Output Amounts.

7.12.2 Liquidated Damages for Output Shortfall.

7.12.2.1 If the quantity of Net Output delivered by the Facility during any month is equal to or greater than the Output Guarantee for such month, Seller's delivery obligation for such month shall be deemed satisfied for that month.

7.12.2.2 If the quantity of Net Output delivered by the Facility during any month is less than the Output Guarantee for such month, the resulting shortfall, if any, shall be determined for that month (the "Output Shortfall"). The Output Shortfall shall be expressed in MWh and calculated in accordance with the following formula:

Output Shortfall = (90% of the Expected Energy for the month).

less

Any quantities of Output that were not delivered to the Point of Delivery (or accepted by Idaho Power) in such month during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the actual Nameplate Capacity Rating),

less

The Net Output for the month.

7.12.2.3 If the product of the Output Shortfall calculation set forth in Section 7.12.2.1 is a positive number, Seller shall pay Idaho Power liquidated damages equal to the product of (i) the Output Shortfall for that month, multiplied by (ii) Idaho Power's Cost to Cover for that month. If the product of the Output Shortfall calculation set forth in Section 7.12.2.1 is a negative number, Seller shall not be obligated to pay Idaho Power liquidated damages for such month.

7.12.2.4 Each Party agrees and acknowledges that (i) the damages that Idaho Power would incur due to the Facility's failure to achieve the Output Guarantee would be difficult or impossible to predict with certainty and (ii) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages.

7.13 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide Idaho Power and its authorized agents, employees and inspectors ("Idaho Power Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) to provide tours of the Facility to customers and other guests of Idaho Power (not more than twelve (12) times per year), (d) for purposes of implementing Sections 2.7 or 10.5, and (e) for other reasonable purposes at the reasonable request of Idaho Power. Idaho Power shall release Seller from any and all Liabilities resulting from actions or omissions by any of the Idaho Power Representatives in connection with their access to the Facility, except to the extent that such Liabilities are caused by the intentional or negligent act or omission of Seller or its agents or Affiliates.

7.14 Facility Images. Idaho Power shall be free to use any and all images from or of the Facility for promotional purposes, subject to Seller's consent (not to be unreasonably withheld or delayed, and which consent may consider Requirements of Law relating to Premises security, obligations to outside vendors (including any confidentiality obligations), and the corporate policies of Seller's Affiliates). Upon Idaho Power's request and at Idaho Power's expense, Seller shall install imaging equipment at the Facility as Idaho Power may request, including video and or web-based imaging equipment subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety. Idaho Power shall retain full discretion on how such images are presented including associating images of the Facility with a Idaho Power-designated corporate logo.

SECTION 8
RIGHT OF FIRST OFFER AND OWNERSHIP OR PURCHASE OPTION

8.1 For purposes of this Section 8, any reference to "Buyer" or "Idaho Power" shall also mean Buyer's or Idaho Power's "Affiliate" as that term is defined in this Agreement.

8.2 Right of First Offer. If this Agreement is terminated for any reason prior to the Commercial Operation Date, then during the Restricted Period, neither Seller nor any of Seller's Affiliates may enter into any agreement to sell, or hedge the quantity of, Energy or Green Tags

generated by equipment installed at the Premises to any party other than Buyer, without first offering the same material price and terms of such agreement to Buyer by written notice ("Offer Notice"). "Restricted Period" means a period that ends eighteen (18) months after the effective date of a termination. If Buyer rejects or fails to respond to the Offer Notice within fifteen (15) Business Days, or the Parties negotiate to enter into an agreement but are unable to execute a definitive agreement within sixty (60) days after Buyer accepts such offer from Seller, then Seller shall have the right to enter into an agreement with a third party on terms and conditions in the aggregate not more favorable than the terms and conditions contained in the Offer Notice. If either Seller or any of its Affiliates wish to enter into an agreement with a third party on terms in the aggregate more favorable to such third party than those offered to Buyer in the Offer Notice, or if Seller or such Affiliate fails to close the transaction which gave rise to Seller's obligation to provide an Offer Notice within nine (9) months following the issuance of the Offer Notice, then any subsequent agreement during the Restricted Period shall again be subject to this Section 8.2. This Section 8.2 shall be specifically enforceable by Buyer without bond and without the need to prove irreparable harm. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the Interconnection Agreement) during the Restricted Period, except by a transfer permitted by Section 8.2. Upon termination of this Agreement prior to the Commercial Operation Date, Seller shall deliver a notice of Buyer's rights in respect of the Site, in an executed, recordable form reasonably acceptable to Buyer, that Buyer may record in the real estate records giving notice of Buyer's rights under this Section 8.2. Seller enters into this Section 8.2 as authorized agent for all of its present and future Affiliates. This Section 8.2 shall apply until the earlier of the expiration of the Restricted Period and the consummation of the first bona fide transfer in accordance with its terms.

8.3 Termination of Duty to Buy. If this Agreement is terminated because of a default by Seller, neither Seller, nor any successor to Seller with respect to the ownership of the Facility (for whom Seller acts herein as agent), may thereafter require or seek to require Buyer to purchase Output from the Facility under Public Utility Regulatory policy Act on account of its status as a Qualifying Facility, or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require Buyer to do so.

8.4 Right of First Offer on Ownership.

8.4.1 At any time subsequent to the Effective Date of this Agreement, except in accordance with this Section 8.4.1, Seller: (a) shall not sell, transfer or offer to sell or transfer, the Facility; and (b) shall cause its immediately upstream owner(s) (together with Seller, each a "ROFO Seller") not to sell, transfer or offer to sell or transfer, any ownership interest in Seller (the Facility and ownership interests in Seller, as applicable, each the "Offered Interests") other than to an Affiliate in accordance with the provisions of Section 22.2 (each a "Restricted Transaction"). If a ROFO Seller intends to enter into a Restricted Transaction, Seller shall provide Buyer with written notice of same (a "Seller ROFO Notice"), and Buyer shall have a right of first offer with respect to the purchase of such Offered Interests. Within thirty (30) days after receipt of the Seller ROFO Notice, Buyer shall notify Seller in writing of its decision whether or not to negotiate with ROFO

Seller for the purchase of the Offered Interests (the "Buyer ROFO Notice"). If Buyer elects to negotiate with ROFO Seller for the purchase of the Offered Interests, Seller shall cause ROFO Seller to negotiate in good faith and exclusively with Buyer, for a period of not less than ninety (90) days following ROFO Seller's receipt of the Buyer ROFO Notice. ("ROFO Period").

8.4.2 In the event that Buyer does not elect to negotiate with ROFO Seller for the purchase of the Offered Interests pursuant to Section 8.4.1, ROFO Seller shall be free to sell, transfer or offer or negotiate to sell or transfer the Offered Interests in ROFO Seller's sole discretion. In the event that Buyer elects to negotiate with ROFO Seller for the purchase of the Offered Interests pursuant to Section 8.4.1, and if definitive transaction documents between ROFO Seller and Buyer or its designee have not been executed with respect to the Offered Interests within the ROFO Period, ROFO Seller may negotiate a Restricted Transaction with any other Person, subject, in all cases, to the terms and conditions of this Agreement, including Section 8.4.1 and the provisions of Section 22. In no event may ROFO Seller enter into a Restricted Transaction with any other Person on economic terms (such as purchase price, payment terms and overall revenue streams associated with such transaction) or other material terms less favorable to ROFO Seller than such economic terms, if any, as were negotiated by Buyer and ROFO Seller. As used in this Section 8.4.2, "other material terms" means any terms identified by the Parties acting in good faith within five (5) Business Days following expiration of the ROFO Period that the Parties have not agreed to during their negotiation.

8.4.3 If ROFO Seller and such other Person do not agree upon the terms, conditions and pricing for the Offered Interests within one hundred eighty (180) days following the expiration of the ROFO Period, ROFO Seller and any Offered Interests shall again be subject to this Section 8.2 with respect to any Restricted Transaction.

8.5 [Reserved]

8.6 Efforts Required to Transfer Facility and Offered Interests. If Buyer exercises any right to purchase or agrees to purchase the Facility (or Offered Interests) pursuant to any of the means specified in this Section 8, then such purchase shall occur pursuant to a form of purchase and sale agreement prepared by Buyer which shall contain customary representations, warranties and covenants and otherwise be in form reasonably acceptable to Buyer. It shall be a condition of any such purchase that Buyer obtains all necessary Governmental Approvals, and notwithstanding any language to the contrary in this Agreement, Buyer shall be given sufficient time to obtain such approvals in accordance with applicable statutes and regulations. Pursuant to the purchase and sale agreement, Seller will take all actions necessary to transfer by deed, bill of sale, or both, the Facility or Offered Interests to Buyer, as well as all other improvements placed on the Premises by Seller that are required for the continued and uninterrupted use, maintenance and operation of the Facility, free and clear from any lien or monetary encumbrance created by or on behalf of Seller or its Affiliates. In addition, Seller will assign to Buyer all transferrable Governmental Approvals applicable to the Facility and Required Facility Documents, and all transferrable warranties for the Facility. Seller shall cooperate with Buyer to assign and enforce any and all warranties that apply to the Facility or any of its component parts, which obligation

shall survive the termination of this Agreement.

8.7 Due Diligence; Cooperation; Governmental Approvals; Notice of Rights. Seller will provide, in a timely manner, information regarding the Facility and Offered Interests which is reasonably requested by Buyer to allow Buyer to perform due diligence for the purchase of the Facility and Offered Interests pursuant to this Section 8. Seller shall further provide commercially reasonable cooperation and assistance to Buyer, without further compensation, throughout Buyer's efforts to properly account for and obtain any necessary Governmental Approvals with respect to the purchase of the Facility and Offered Interests pursuant to this Section 8. Notwithstanding anything in this Agreement or any definitive transaction documentation, Buyer shall not be obligated to proceed with the purchase of the Facility or any Offered Interests pursuant to this Section 8 if Buyer does not receive all necessary Governmental Approvals in connection with such transaction. Seller shall put any Person with which it enters into discussions or negotiations regarding a Restricted Transaction on notice of the rights of Buyer set forth in this Section 8. Buyer shall be permitted to file a notice of the rights contained in this Section 8 with respect to the Premises.

8.8 Termination of Agreement. Upon the acquisition of the Facility or Offered Interests by Buyer pursuant to this Section 8, this Agreement shall terminate and neither Party shall have any obligation to the other under this Agreement, except with respect to the terms and provisions hereof that expressly survive the termination of this Agreement.

SECTION 9
SECURITY AND CREDIT SUPPORT

9.1 Project Development Security. Seller shall provide within five (5) Business Days from receipt of a written request from Idaho Power all reasonable financial records necessary for Idaho Power to confirm Seller satisfies the Credit Requirements.

9.1.1 Form and Amount of Project Development Security. On or before thirty (30) days of the date of the Effective Date, Seller shall post and maintain in favor of Idaho Power (a) a guaranty from a party that satisfies the Credit Requirements, in substantially the form attached hereto as Exhibit 8, (b) a Letter of Credit in favor of Idaho Power, in a form acceptable to Idaho Power in its reasonable discretion, or (c) cash collateral equal in each case to ninety thousand dollars ([$90,000]) per MW of Nameplate Capacity Rating (the "Project Development Security"). Seller and any person or entity providing a guaranty shall provide within five (5) Business Days from receipt of a written request from Idaho Power all reasonable financial records necessary for Idaho Power to confirm the guarantor satisfies the Credit Requirements.

9.1.2 Use of Project Development Security to Pay Delay Damages. If the Commercial Operation Date occurs after the Scheduled Commercial Operation Date and Seller has failed to pay any Delay Damages when due under Section 4.4, Idaho Power shall be entitled to and shall draw upon the Project Development Security an amount equal to the Delay Damages. Idaho Power shall also be entitled to draw upon the Project Development Security for other damages if this Agreement is terminated under Section 12 because of Seller's default.

9.1.3 Termination of Project Development Security. Seller shall no longer be required to maintain the Project Development Security after the Commercial Operation Date, if at such time no damages are owed to Idaho Power under this Agreement. However, as of the Commercial Operation Date, Seller may elect to apply the Project Development Security toward the Default Security required by Section 9.2, including by the automatic continuation (as opposed to the replacement) thereof.

9.2 Default Security.

9.2.1 Duty to Post Default Security. On the date specified in Section 4.2.1, Seller shall post and maintain in favor of Idaho Power (a) a guaranty from an entity that satisfies the Credit Requirements, in substantially the form attached hereto as Exhibit 8, or (b) a Letter of Credit, each in the amount specified in Section 9.2.2 (the "Default Security"), as provided in this Section 9.2. Seller and any person or entity providing a guaranty shall provide within five (5) Business Days from receipt of a written request from Idaho Power all reasonable financial records necessary for Idaho Power to confirm the guarantor satisfies the Credit Requirements.

9.2.2 Amount of Default Security. The amount of the Default Security required by Section 9.2.1 shall be forty five thousand dollars ([$45,000]) per MW of Nameplate Capacity Rating and will be held until this Agreement expires. The amount of Default Security required shall be thirty-five thousand dollars ([$35,000]) per MW of Nameplate Capacity Rating beginning with Contract Year eleven (11).

9.2.3 Use of Default Security to Pay Deficit Damages. If the Seller has failed to pay any Deficit Damages when due under Section 4.4, Idaho Power shall be entitled to and shall draw upon the Default Security an amount equal to the Deficit Damages until such time as the Default Security is exhausted. Idaho Power shall also be entitled to draw upon the Default Security for other damages if this Agreement is terminated under Section 12 because of Seller's default.

9.3 Senior Lenders. If Seller collaterally assigns this Agreement to Seller's Lenders in a manner permitted under this Agreement, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit 21. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit 22. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in

connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this Agreement.

9.4 Change of Control. Seller may not suffer any Change of Control, whether voluntary or by operation of law, without Buyer's prior written consent, granted or withheld in Buyer's reasonable discretion. Seller may not suffer a Change of Control or any other change of ownership or control, whether direct or indirect, voluntary or by operation of law, such that Seller becomes a Sanctioned Person. Seller shall give Buyer notice of any Change of Control within ten (10) Business Days following the effectiveness thereof

9.5 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 9 (a) constitutes security for, but is not a limitation of, Seller's obligations hereunder and (b) shall not be Idaho Power's exclusive remedy for Seller's failure to perform in accordance with this Agreement. Seller shall maintain security as required by Sections 9.1 and 9.2, as applicable per this Agreement. To the extent that Idaho Power draws on any security, Seller shall, within five (5) Business Days following such draw, replenish or reinstate the security to the full amount then required under this Section 9. If at any time the Seller or Seller's credit support provider(s) fails to meet the Credit Requirements, then Seller shall provide replacement security meeting the requirements set forth in Section 9 within ten (10) Business Days after the earlier of (x) Seller's receipt of notice from any source that Seller or the credit support provider(s), as applicable, no longer meets the Credit Requirements or (y) Seller's receipt of written notice from Idaho Power requesting the posting of alternate security.

SECTION 10
METERING, METERING COMMUNICATIONS AND SCADA TELEMETRY

10.1 Metering. Idaho Power shall, provide, install, and maintain metering equipment needed for metering the electrical energy production from the Facility. The metering equipment will be capable of measuring, recording, retrieving and reporting the Facility's hourly gross electrical energy production, station use, maximum energy deliveries (MW) and any other energy measurements at the Point of Delivery that Idaho Power needs to administer this Agreement and integrate this Facility's energy production into the Idaho Power electrical system. Specific equipment, installation details and requirements for this metering equipment will be established in the GIA process and documented in the GIA. Seller shall be responsible for all initial and ongoing costs of this equipment as specified in Schedule 72 of the Tariff and the GIA. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility.

10.2 Metering Communications. Seller shall, at the Seller's sole initial and ongoing expense, arrange for, provide, install, and maintain dedicated metering communications equipment capable of transmitting the metering data specified in Section10.1 to Idaho Power in a frequency, manner and form acceptable to Idaho Power. Seller shall grant Idaho Power sole control and use of this dedicated metering communications equipment. Specific details and requirements for this metering communications equipment will be established in the GIA process and documented in the GIA.

10.3 Supervisory Control and Data Acquisition (SCADA) Telemetry. If the Facility's Nameplate Capacity exceeds 3 MW, in addition to the requirements of Section 10.1 and 10.2, Idaho Power may require telemetry equipment and telecommunications which will be capable of providing Idaho Power with continuous instantaneous SCADA telemetry of the Seller's Net Output and Inadvertent Energy production in a form acceptable to Idaho Power. Seller shall grant Idaho Power sole control and use of this dedicated SCADA and telecommunications equipment. Specific details and requirements for this SCADA Telemetry and telecommunications equipment will be established in the GIA process and documented in the GIA. Seller shall be responsible for all initial and ongoing costs of this equipment as specified in Schedule 72 of the Tariff and the GIA.

10.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs (including Idaho Power's costs) relating to all metering equipment installed to accommodate Seller's Facility.

10.5 Losses. If the Idaho Power Metering equipment is capable of measuring the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, no Losses will be calculated for this Facility. If the Idaho Power Metering Equipment is unable to measure the exact electric energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, a Losses calculation will be established to measure the energy losses (MWh) between the Seller's Facility and the Idaho Power Point of Delivery. This loss calculation will be initially set at two percent (2%) of the MWh energy production recorded on the Facility generation metering equipment. At such time as Seller provides Idaho Power with the electrical equipment specifications (transformer loss specifications, conductor sizes, etc.) of all of the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power will configure a revised loss calculation formula to be agreed to by both parties and used to calculate the MWh Losses for the remaining term of the Agreement. If at any time during the term of this Agreement, Idaho Power determines that the loss calculation does not correctly reflect the actual MWh losses attributed to the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power may adjust the calculation and retroactively adjust the previous month's MWh loss calculations.

SECTION 11
BILLINGS, COMPUTATIONS AND PAYMENTS

11.1 Monthly Invoices. On or before the tenth (10th) day following the end of each calendar month, Seller shall deliver to Idaho Power a proper invoice showing Seller's computation of Net Output delivered to the Point of Delivery during such month in the form of Exhibit 1. When calculating the invoice, Seller shall provide computations showing the portion of Net Output that was delivered during On-Peak Hours and the portion of Net Output that was delivered during Off-Peak Hours. If such invoice is delivered by Seller to Idaho Power, then Idaho Power shall send to Seller, on or before the later of the twentieth (20th) day following receipt of such invoice or the thirtieth (30th) day following the end of each month, payment for Seller's deliveries of Net Output and associated Green Tags to Idaho Power.

11.2 Offsets. Either Party may offset any payment due hereunder against amounts owed by the other Party pursuant hereto. Either Party's exercise of recoupment and set off rights shall not limit the other remedies available to such Party hereunder.

11.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid.

11.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Except with respect to invoices provided under Section 11.1, any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) Business Days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

11.5 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense upon reasonable written notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Net Output delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 12
DEFAULTS AND REMEDIES

12.1 Defaults. The following events are defaults (each a "default" before the passing of applicable notice and cure periods, and an "Event of Default" thereafter) hereunder:

12.1.1 Defaults by Either Party:

12.1.1.1 A Party fails to make a payment when due hereunder if the failure is not cured within ten (10) Business Days after the non-defaulting Party gives the defaulting Party a notice of the default.

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

12.1.1.3 A Party breaches a representation or warranty made by it herein if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a written notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a ninety (90) day cure period, the defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting Party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

12.1.1.4 A Party otherwise fails to perform any material obligation hereunder for which an exclusive remedy is not provided hereunder and which is not addressed in any other default described in Section 12.1, if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party written notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a ninety (90) day cure period, the defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting Party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

12.1.2 Defaults by Seller.

12.1.2.1 Seller fails to post, increase, or maintain the Project Development Security or Default Security as required under, and by the applicable dates set forth in, Section 9.1 and Section 9.2 and such failure is not cured within ten (10) Business Days after Idaho Power gives Seller notice of default.

12.1.2.2 Seller fails to (i) cause the Facility to achieve Commercial

Operation on or before the Guaranteed Commercial Operation Date, or (ii) complete all items included on the Final Completion Schedule within ninety (90) days after the Commercial Operation Date.

12.1.2.3 Seller sells Output, Green Tags or Capacity Rights from the Facility to a party other than Idaho Power in breach of Section 5.2, Seller diverts any Environmental Attributes for any use other than sale to Buyer, or Seller makes a public statement or otherwise takes an action that any Governmental Authority or the Center for Resource Solutions determines is a retirement, double counting, double sale, double use or double claim of Green Tags.

12.1.2.4 Idaho Power receives notice of foreclosure of the Facility or any part thereof by a Lender, mechanic or materialman, or any other holder, of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten (10) days of the date of the notice received by Idaho Power.

12.1.2.5 After the Commercial Operation Date, Seller fails to maintain any Required Facility Documents or Permits necessary to own, operate, or maintain the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from Idaho Power; provided, however, that, upon written notice from Seller, the thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) Seller commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

12.1.2.6 Seller's Abandonment of construction or operation of the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from Idaho Power.

12.1.2.7 Seller fails to maintain insurance as required by the Agreement and such failure continues for fifteen (15) days after Seller's receipt of written notice thereof from Idaho Power.

12.1.2.8 Seller fails to meet the Output Guarantee for two (2) consecutive years.

12.1.2.9 Every three (3) years after the Commercial Operation Date, Seller will supply Idaho Power with a Certification of Ongoing Operations and Maintenance (O&M) from a Registered Professional Engineer licensed in the State of Idaho, which Certification of Ongoing O&M shall be in the form specified in Exhibit 11. Seller's failure to supply the required certificate will be an event of default. Such a default may only be cured by Seller providing the required certificate; and

12.1.2.10 During the full Term of this Agreement, Seller shall maintain compliance with all Required Facility Documents and determinations described in Exhibit 9 of this Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional Required Facility Documents or determinations. At least every fifth (5^{th}) Contract Year, Seller will update the documentation described in Exhibit 9. If at any time Seller fails to maintain compliance with the Required Facility Documents and determinations described in Section 2.2.3 or to provide the documentation required by this paragraph, such failure will be a default of Seller and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

12.1.2.11 Seller is or becomes a Sanctioned Person.

12.1.2.12 Seller breaches any obligation in Section 27.2, or any representation or warranty made by Seller in Section 27.2 is or becomes false or misleading in any material respect (provided that if the falsity or misleading nature of the representation or breach of the obligation is capable of being cured, an Event of Default will be deemed to occur only if the falsity or misleading nature of the representation or breach of obligation is not remedied within five (5) days after notice);

12.2 Remedies for Failure to Deliver/Receive.

12.2.1 Remedy for Seller's Failure to Deliver. Upon the occurrence and during the continuation of a default of Seller under Section 12.1.3, Seller shall pay Idaho Power within five (5) Business Days after invoice receipt, an amount equal to the sum of (a) Idaho Power's Cost to Cover multiplied by the Net Output delivered to a party other than Idaho Power, (b) additional transmission charges, if any, reasonably incurred by Idaho Power in moving replacement energy to the Point of Delivery or if not there, to such points in Idaho Power's control area as are determined by Idaho Power, and (c) any additional cost or expense incurred as a result of Seller's default under Section 12.1.3, as determined by Idaho Power in a commercially reasonable manner. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

12.2.2 Remedy for Idaho Power's Failure to Purchase. If Idaho Power fails to receive or purchase all or part of the Net Output and Green Tags required to be purchased pursuant hereto and such failure is not excused under the terms hereof or by Seller's failure to perform, then Seller shall first satisfy its obligations under Section 12.7 and then Idaho Power shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount equal to Seller's Cost to Cover multiplied by the amount of Net Output so not purchased, less amounts received by Seller pursuant to Section 12.7. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

12.2.3 Remedy for Seller's Failure to Sell/Deliver Capacity Rights. Seller shall be liable for Idaho Power's actual damages in the event Seller fails to sell or deliver all or any portion of the Capacity Rights to Idaho Power.

12.3 Termination and Remedies. From and during the continuance of an Event of Default, the non-defaulting Party shall be entitled to all remedies available at law or in equity, and may terminate this Agreement by written notice to the other Party designating the date of termination and delivered to the defaulting Party no less than one (1) Business Day before such termination date. The notice required by this Section 12.3 may be provided in the notice of default (and does not have to be a separate notice) so long as it complies with all other terms of this Section 12.3. As a precondition to Seller's exercise of this termination right, Seller must also provide copies of such notice to the notice addresses of the then-current President and General Counsel of Idaho Power. Such copies shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested. In addition, Seller's termination notice shall state prominently therein in type font no smaller than 14-point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER A PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions. Notwithstanding any other provision of this Agreement to the contrary, Seller will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within fifteen (15) Business Days of Idaho Power's receipt of such notice. Further, from and after the date upon which Seller fails to remedy a default within the time periods provided in Section 12.1, and until Idaho Power has recovered all damages incurred on account of such default by Seller, without exercising its termination right, Idaho Power may offset its damages against any payment due Seller. Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy, upon termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement. The rights contemplated by this Section 12 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. In the event of a termination hereof:

12.3.1 Each Party shall pay to the other all amounts due the other hereunder for all periods prior to termination, subject to offset by the non-defaulting Party against damages incurred by such Party.

12.3.2 The amounts due pursuant to Section 12.3.1 shall be calculated and paid within thirty (30) days after the billing date for such charges and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due hereunder.

12.3.3 Before and after the effective date of termination, the non-defaulting Party may pursue, to the extent permitted by this Agreement, any and all legal or equitable remedies provided by law, equity or this Agreement.

12.3.4 Without limiting the generality of the foregoing, the provisions of Sections 6.4,

6.5, 7.10.4, 7.10.5, 7.10.7, 11.3, 11.4, 11.5, and Section 12, Section 13, Section 14.1, Section 17, Section 23, Section 24, Section 25, and Section 26 shall survive the termination hereof.

12.4 Termination Damages. If this Agreement is terminated as a result of an Event of Default by one of the Parties, termination damages shall be determined. The amount of termination damages shall be calculated by the non-defaulting Party within a reasonable period after termination of the Agreement. In the event of a default by Seller before the Commercial Operation Date, the termination payment shall be the Pre-COD Damages Payment. In the event of default by Seller on or after the Commercial Operation Date, or any default by Buyer, the termination payment shall be the Forward Settlement Amount. Amounts owed pursuant to this section shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party written notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default.

12.5 [Omitted]

12.6 Duty/Right 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 performance or non-performance hereof; provided, however, that this duty to mitigate shall not limit the amounts payable by the defaulting Party to the non-defaulting Party pursuant to Section 12.4. "Commercially reasonable efforts" (a) by Seller shall include requiring Seller to use commercially reasonable efforts to maximize the price for Net Output and associated Green Tags received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Net Output and associated Green Tags not purchased or accepted by Idaho Power (only during a period Idaho Power is in default), in each case only to the extent any of the foregoing actions are permitted under Requirements of Law and the Interconnection Agreement; and (b) by Idaho Power shall include requiring Idaho Power to use commercially reasonable efforts to minimize the price paid to third parties for energy and Green Tags purchased to replace Net Output and Green Tags not delivered by Seller as required hereunder.

12.7 Security. If this Agreement is terminated because of Seller's default, Idaho Power may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any Seller security held by Idaho Power in whatever form to reduce any amounts that Seller owes Idaho Power arising from such default.

12.8 Cumulative Remedies. Except in circumstances in which a remedy provided for in this Agreement is described as a sole or exclusive remedy, the rights and remedies provided to Idaho Power hereunder are cumulative and not exclusive of any rights or remedies of Idaho Power.

SECTION 13
INDEMNIFICATION AND LIABILITY

13.1 Indemnities.

13.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 13.1.5, Seller shall release, indemnify and hold harmless Idaho Power, and each of its divisions, Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Idaho Power Indemnitees") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility or Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to or destruction of property of, any person or entity, or for or on account of violation of environmental or criminal law, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Idaho Power Indemnitees. Seller shall be solely responsible for (and shall defend and hold Idaho Power harmless against) any damage that may occur as a direct result of Seller's breach of the Generation Interconnection Agreement.

13.1.2 Indemnity by Idaho Power. To the extent permitted by Requirements of Law and subject to Section 13.1.5, Idaho Power shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Seller Indemnitees") against and from any and all Liabilities actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by Idaho Power of its obligations hereunder for or on account of (a) injury, bodily or otherwise, to, or death of, or (b) for damage to, or destruction of property of, any person or entity within the Seller Indemnitees, excepting only to the extent such Liabilities as may be caused by the negligence or willful misconduct of any person or entity within the Seller Indemnitees.

13.1.3 Additional Cross Indemnity. Without limiting Sections 13.1.1 and 13.1.2, Seller shall release, indemnify and hold harmless the Idaho Power indemnitees from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Delivery, and Idaho Power shall release, indemnify and hold harmless the Seller Indemnitees from and against all Liabilities related to Net Output once delivered to Idaho Power at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the gross negligence or willful misconduct or a breach of this Agreement by any member of the Idaho Power Indemnitees or the Seller Indemnitees, respectively, seeking indemnification hereunder.

13.1.4 No Dedication. Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party. No undertaking by one Party to the other under any provision hereof shall constitute the dedication of Idaho Power's facilities or any portion thereof to Seller or to the public, nor affect the status of Idaho Power as an independent public utility corporation or Seller as

an independent individual or entity.

13.1.5 Consequential Damages. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, SECURITY, INDEMNIFIED CLAIMS OR DAMAGES, DELAY DAMAGES, IDAHO POWER AND SELLER COST TO COVER DAMAGES, SECTION 12.2.3 CAPACITY RIGHTS LOSS DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT AND WILL NOT BE DEEMED SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES AND SHALL NOT BE LIMITED IN AMOUNT BY THIS SECTION 13.1.5.**

SECTION 14
INSURANCE

14.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry the insurance coverage specified on Exhibit 13 during the Term or longer period if specified in Exhibit 13.

14.2 Certificates of insurance. Seller shall provide Idaho Power with certificates of insurance within ten (10) days after the date by which such policies are required to be obtained (as set forth in Exhibit 13). Seller shall provide a certificate of insurance (in ACORD or similar industry form) to Idaho Power within ten (10) days of the effective date of any insurance policy required under this Agreement.

SECTION 15
FORCE MAJEURE

15.1 Definition of Force Majeure. "Force Majeure" or "an event of Force Majeure" means an event that (a) is not reasonably anticipated as of the Effective Date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; civil disturbance; sabotage; strikes; lock-outs; work stoppages; and action or restraint by court order or public or Governmental Authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or Idaho Power's ability to purchase energy, capacity or Green Tags at a more advantageous price than is provided hereunder; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or

malfunction of the Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure, (v) the imposition upon a Party of costs or taxes allocated to such Party under Section 6.4, (vi) delay or failure of Seller to obtain or perform any Required Facility Document unless due to a Force Majeure event, (vii) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving the Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a result of an event of Force Majeure); (viii) Seller's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to transmission owner, Transmission Provider or Interconnection Provider, unless due to a Force Majeure event; (ix) Seller's inability to obtain any supply of any good or service, unless due to an independent event of Force Majeure; or (x) any event attributable to the use of Interconnection Facilities for deliveries of Net Output to any party other than Idaho Power. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, steel, labor, or transportation constitute an event of Force Majeure.

15.2 Suspension of Performance. Neither Party shall be liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become a default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure during the continuation of the event of Force Majeure, for the same number of days that the event of Force Majeure has prevailed, provided that:

15.2.1 the Party affected by the Force Majeure, shall, within five (5) days after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

15.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and

15.2.3 the affected Party shall use diligent efforts to remedy its inability to perform and shall provide prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

15.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure. No obligation of Seller arising before the Commercial Operation Date may be excused by Force Majeure.

15.4 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

15.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding one hundred and eighty (180) consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the Force Majeure event, with respect to its obligations hereunder, may terminate this Agreement by

giving ten (10) days prior written notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising hereunder before the effective date of such termination.

SECTION 16
SEVERAL OBLIGATIONS; THIRD PARTY BENEFICIARIES

Nothing contained herein shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties. Nothing in this Agreement shall be construed to create any duty, obligation or liability of Seller or Buyer to any Person not a Party to this Agreement.

SECTION 17
CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Idaho, applying any choice of law rules that may direct the application of the laws of another jurisdiction.

SECTION 18
PARTIAL INVALIDITY

The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal or void as being contrary to any Requirements of Law or public policy, all other terms hereof shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under Requirements of Law, (b) give effect to the intent of the Parties under this Agreement, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

SECTION 19
NON-WAIVER

No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

SECTION 20
GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party, the Facility, or this Agreement. During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, or ownership of the Facility.

SECTION 21

[INTENTIONALLY OMITTED]

SECTION 22
SUCCESSORS AND ASSIGNS

22.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

22.2 Permitted Assignments. Notwithstanding Section 22.1, either Party may, without the need for consent from the other Party (but with written notice to the other Party, including the names of the assignees): (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with project financing for the Facility; or (b) transfer or assign this Agreement to an Affiliate meeting the requirements of this Agreement; provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of Idaho Power without the prior written consent of Idaho Power. Except with respect to collateral assignments for financing purposes in every assignment permitted under this Section 22.2, the assignee must not be a Sanctioned Person, must agree in writing to be bound by the terms and conditions hereof and must possess the same or similar experience, and possess the same or better creditworthiness, as the assignor. Idaho Power may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that Idaho Power ceases to be a load-serving entity, in which event Idaho Power shall be released from liability hereunder upon approval of Idaho Power ceasing to be a load-serving entity by the IPUC and OPUC. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

SECTION 23
ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. No modification hereof shall be effective unless it is in writing and executed by both Parties.

SECTION 24
NOTICES

24.1 Addresses and Delivery Methods. All notices, requests, statements or payments shall be made to the addresses set out below. In addition, copies of a notice of termination of this Agreement under Section 12.3 shall contain the information required by Section 12.3 and shall be sent to the then-current President and General Counsel of Idaho Power. Notices required to be

in writing shall be delivered by letter, facsimile or other tangible documentary form. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. Notice by hand delivery shall be deemed to have been given when received or hand delivered. Notice by facsimile is effective as of transmission to each and all of the telefacsimile numbers provided below for a Party, but must be followed up by notice by registered mail or overnight carrier to be effective. Notice by overnight mail shall be deemed to have been given the Business Day after it is sent, if sent for next day delivery to a domestic address by a recognized overnight delivery service (e.g., Federal Express or UPS). Notice by certified or registered mail, return receipt requested, shall be deemed to have been given upon receipt.

To Seller:

To Idaho Power:
Idaho Power
1221 W Idaho St
Boise, ID 83702
Attn: Vice President, Power Supply
Email: energycontracts@idahopower.com

with a copy to:
Idaho Power
1221 W Idaho St
Boise, ID 83702
Attn: Energy Contracts
Email: energycontracts@idahopower.com

and termination notices to Idaho Power:
Idaho Power
1221 W Idaho St
Boise, ID 83702
Attn: Vice President, Power Supply
Email: energycontracts@idahopower.com

and to:
Idaho Power
1221 W Idaho St
Boise, ID 83702
Attn: Energy Contracts
Email: energycontracts@idahopower.com

24.2 Changes of Address. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this section.

SECTION 25
CONFIDENTIALITY

25.1 Confidential Business Information. The following constitutes "Confidential Business

Information," whether oral or written: (a) the Parties' proposals and negotiations concerning this Agreement, made or conducted prior to the Effective Date, (b) the actual charges billed to Idaho Power hereunder, and (c) any information delivered by Idaho Power to Seller prior to the Effective Date relating to the market prices of energy or Green Tags and methodologies for their determination or estimation. Seller and Idaho Power each agree to hold such Confidential Business Information wholly confidential, except as otherwise expressly provided in this Agreement. "Confidential Business Information" shall not include information that (x) is in or enters the public domain through no fault of the Party receiving such information, or (y) was in the possession of a Party prior to the Effective Date, other than through delivery thereof as specified in subsections (a) and (c) above. A Party providing any written Confidential Business Information under this Agreement shall clearly mark all pages of all documents and materials to be treated as Confidential Business information with the term "Confidential" on the front of each page, document or material. If the Confidential Business Information is transmitted by electronic means the title or subject line shall indicate the information is Confidential Business Information. All Confidential Business Information shall be maintained as confidential, pursuant to the terms of this Section 25.1, for a period of two (2) years from the date it is received by the receiving Party unless otherwise agreed to in writing by the Parties.

25.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its Affiliates, accountants, auditors, counsel, consultants, lenders, prospective lenders, employees, and officers and directors), without the prior written consent of the other Party, provided that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required (i) by Requirements of Law, (ii) in order for Idaho Power to receive regulatory approval and recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof, and (b) notwithstanding any other provision hereof, Idaho Power may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Sections 25.1(b) or 25.1(c). In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party shall to the extent possible promptly notify the other Party of the obligation to disclose such information.

25.3 Idaho Power Regulatory Compliance. The Parties acknowledge that Idaho Power is required by Requirements of Law to report certain information that is or could otherwise embody Confidential Business Information from time to time. Such reports include models, filings, reports of Idaho Power's net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1 or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, WECC, Pacific Northwest Utility Coordinating Committee, WREGIS, or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, Idaho Power will from time to time be required to produce Confidential Business Information. Idaho Power may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. Idaho Power may submit Confidential Business Information in regulatory

proceedings without notice to Seller.

25.4 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 25 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

25.5 News Releases and Publicity. Except as otherwise provided in Section 7.14, before either Party issues any news release or publicly distributed promotional material regarding the Facility that mentions the Facility, such Party shall first provide a copy thereof to the other Party for its review and approval. Any use of either Party's name in such news release or promotional material must adhere to such Party's publicity guidelines then in effect; any use of Idaho Power's name requires Idaho Power's prior written consent.

SECTION 26
DISAGREEMENTS

26.1 Negotiations. Prior to proceeding with formal dispute resolution procedures as provided below in this Section 26, the Parties must first attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above those employees who have previously been involved in the dispute must meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate any legal remedies available to the Party. All negotiations pursuant to this clause are confidential.

26.2 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to this Agreement shall be brought exclusively in the United States District Court for the District of Idaho in Boise, Idaho, or if such court does not have jurisdiction, in the 4th Judicial District (Ada County) Court of the State of Idaho. By execution and delivery hereof, each Party (a) accepts

the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein, and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

26.3 Settlement Discussions. No statements of position or offers of settlement made in the course of the dispute process described in this Section 26 will be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

26.4 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THIS SECTION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

SECTION 27
COMPLIANCE

27.1 Nondiscrimination. Customer or its Affiliates is a federal contractor and maintains an equal opportunity/affirmative action program in accordance with Applicable Law. As a result, Seller must, to the extent required by Applicable Law, afford equal employment opportunity to all of its applicants and employees, regardless of their race, color, national origin, sex, age, religion, marital status, sexual orientation, gender identity and gender expression, protected veteran status, disability, or other basis protected by law. Also as a result, but only if required by

Applicable Law, Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status. In connection with this Agreement and the Facility, Seller will comply with, and cause all of its direct and indirect contractors and subcontractors to expressly agree to comply with, all laws and regulations relating to forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons.

27.2 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Facility or the Premises, Seller, on behalf of itself, Seller's Parent Entity and any other direct or indirect upstream equity owners that, notwithstanding percentage of equity ownership interest, have the voting power or otherwise have the power to control the day-to-day management, operations and policies of Seller, and such Affiliates that Seller contractually or otherwise controls or directs in the management or operation of the Facility, and in each case, including the officers, directors, employees and agents of such entities, represents and warrants that it has not engaged in, and that it shall refrain from, offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in his or her official capacity, (ii) induce a Government Official to act in violation of his or her lawful duty, (iii) induce a Government Official to use his or her influence with a government or instrumentality thereof, or (iv) otherwise secure any improper advantage, in each case to the extent prohibited by applicable anti-corruption laws; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption laws. If Seller fails to comply with this Section 27.2 then Buyer may terminate this Agreement in accordance with Section 12.1.2.12 . In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for five (5) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any breach of this Section 27.2 by Seller or its representatives. Seller will ensure that the contractors and subcontractors it retains in connection with this Agreement expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 27.2 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to an Event of Default under Section 12.1.2.12, Buyer shall have no obligation to make further payments hereunder. Buyer's rights and Seller's obligations under this Section 27.2 shall survive the termination or expiration of the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date last written below.

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

EXHIBIT 1

MONTHLY POWER PRODUCTION AND SWITCHING REPORT

Month _____ **Year** _____

Project Name _____ **Project Number:** _____

Address _____ **Phone Number:** _____

City _____ **State** _____ **Zip** _____ **State** _____

	Facility Output	Station Usage	Metered Maximum Generation
Meter Number:			
End of Month MWh Meter Reading:			**MW**
Beginning of Month MWh Meter:			
Difference:			
Times Meter Constant:			
MWh for the Month:		-	= **Net Generation**
Metered Demand:			

Breaker Opening Record

Date	Time	Meter	*	Reason

Breaker Closing Record

Date	Time	Meter

*** Breaker Opening Reason Codes**

1 Lack of Adequate Prime Mover
2 Forced Outage of Facility
3 Disturbance of IPCo System
4 Scheduled Maintenance
5 Testing of Protection Systems
6 Cause Unknown
7 Other (Explain)

I hereby certify that the above meter readings are true and correct as of Midnight on the last day of the above month and that the switching record is accurate and complete as required by the Energy Sales Agreement to which I am a Party.

_____ _____

Signature **Date**

A-2 AUTOMATED METER READING COLLECTION PROCESS

Monthly, Idaho Power will use the provided Metering and Telemetry equipment and processes to collect the meter reading information from the Idaho Power provided Metering Equipment that measures the Net Energy and energy delivered to supply Station Use for the Facility recorded at 12:00 AM (Midnight) of the last day of the month.

The meter information collected will include but not be limited to energy production, Station Use, the maximum generated power (MW) and any other required energy measurements to adequately administer this Agreement.

A-3 SELLER CONTACT INFORMATION

Seller's Contact Information

Name:
Telephone Number:
Cell Phone:
E-Mail:

24-Hour Project Operational Contact

Name:
Telephone Number:
Cell Phone:
E-Mail:

Project On-site Contact information

Name:
Telephone Number:
Cell Phone:
E-Mail:

EXHIBIT 2

DESCRIPTION OF FACILITY

Project Name: _____

Project Number: _____

B-1 DESCRIPTION OF FACILITY

(Must include the Nameplate Capacity rating and VAR capability (both leading and lagging) of all Generation Units to be included in the Facility.)

_____
_____
_____
_____
_____

Var Capability (Both leading and lagging) Leading is _____Lagging is _____.

B-2 LOCATION OF FACILITY

Near: _____

Actual or nearest physical street address: _____

GPS Coordinates: Latitude Decimal Degrees: _____

Longitude Decimal Degrees: _____

State: _____ County: _____

EXHIBIT 3

POINT OF DELIVERY/INTERCONNECTION FACILITIES

Instructions to Seller:

1. Include description of point of metering, and Point of Interconnection

2. Include description of Point of Delivery

3. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Interconnection.

5. Describe Seller's arrangements for station service to the Facility and show on one-line diagram how station service will be provided and metered.

6. Specify the maximum hourly rate (MW) at which Seller is permitted to deliver energy to the Point of Delivery and in compliance with Seller's transmission rights between the Point of Interconnection and the Point of Delivery ("Maximum Transmission Rate"):

_____MW.

Seller to provide to Buyer with a copy of the final Generator Interconnection Agreement

EXHIBIT 4

ESTIMATED MONTHLY NET OUTPUT

EXPECTED ENERGY - FIRST FULL CONTRACT YEAR			
PERIOD	**ON-PEAK (MWh)**	**OFF-PEAK (MWh)**	**TOTAL (MWh)**
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
First Year Total			

EXPECTED ENERGY - ANNUAL REDUCTION	
PERIOD	**EXPECTED ENERGY (MWh)**
Year 0-1	
Year 1-2	
Year 2-3	
Year 3-4	
Year 4-5	
Year 5-6	
Year 6-7	
Year 7-8	
Year 8-9	
Year 9-10	
Year 10-11	
Year 11-12	
Year 12-13	
Year 13-14	
Year 14-15	
Year 15-16	
Year 16-17	
Year 17-18	
Year 18-19	
Year 19-20	

Under separate cover, Seller will also provide Idaho Power one (1) electronic and hard copy of the solar plant performance estimation report using a Solar Performance Modeling Program no later than ninety (90) days prior to the start of construction. This report will include, at a minimum, estimated hourly MW generation output in MWh/h for the Premises and Facility, and shall set forth additional losses related to availability, AC-side collection, transformers, substation and no-load/overnight losses. On or prior to the Commercial Operation Date, Seller shall provide an updated Exhibit A and solar plant performance estimation report based on completed construction.

Upon the date of Final Completion, if different than the Commercial Operation Date, Seller shall provide an updated Exhibit A and solar plant performance estimation report based on the final completed construction.

EXHIBIT 5

CONTRACT PRICE

Contract Price	
Contract Year	$/MWh
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

EXHIBIT 6

NERC EVENT TYPES

Event Type	**Description of Outages**
U1	Unplanned (Forced) Outage—Immediate – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2	Unplanned (Forced) Outage—Delayed – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3	Unplanned (Forced) Outage—Postponed – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF	Startup Failure – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	Maintenance Outage – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	Maintenance Outage Extension – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	Planned Outage – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine replacement or inspections are typical planned outages.)
PE	Planned Outage Extension – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

EXHIBIT 7

START-UP TESTING

(Seller to provide to Buyer before the First Generation Date)

EXHIBIT 8

FORM OF GUARANTY — CREDIT SUPPORT OBLIGATION

FORMS OF LIQUID SECURITY

The Seller shall provide Idaho Power with commercially reasonable security instruments such as Cash, Cash Escrow Security, Guarantee or Letter of Credit as those terms are defined below or other forms of liquid financial security that would provide readily available cash to Idaho Power to satisfy the security requirements within this Agreement.

For the purpose of this Appendix D, the term "Credit Requirements" shall mean acceptable financial creditworthiness of the entity providing the security instrument in relation to the term of the obligation in the reasonable judgment of Idaho Power, provided that any guarantee and/or Letter of Credit issued by any other entity with a short-term or long-term investment grade credit rating by Standard & Poor's Corporation or Moody's Investor Services, Inc. or any successors shall be deemed to have acceptable financial creditworthiness.

1. Cash – Seller shall deposit cash in the amount of the required security with Idaho Power. Idaho Power will not be responsible to calculate or pay any interest on these funds deposited with Idaho Power.

2. Cash Escrow Security – Seller shall deposit funds in an escrow account established by the Seller in a banking institution acceptable to both Parties equal to the required security. The Seller shall be responsible for all costs, and receive any interest earned associated with establishing and maintaining the escrow account(s).

3. Guarantee or Letter of Credit Security – Seller shall post and maintain in an amount equal to the required security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or (b) an irrevocable Letter of Credit in a form acceptable to Idaho Power, in favor of Idaho Power. The Letter of Credit will be issued by a financial institution acceptable to both parties. The Seller shall be responsible for all costs associated with establishing and maintaining the Guarantee(s) or Letter(s) of Credit.

EXHIBIT 9

REQUIRED FACILITY DOCUMENTS

1. Obtained Required Facility Documents:

Permits:

Conditional Use Permits from Twin Falls County for the construction and operation of the Facility

Land Rights:

Solar Park Lease Agreement for the land, access, and interconnection of the Facility.

2. To Be Obtained (Prior to Commercial Operation) Required Facility Documents:

Licenses, Permits and Authorizations:

Evidence of market-based rate authority under Section 205 of the Federal Power Act or evidence of qualifying facility certification under the Public Utility Regulatory Policies Act

Access road easement

Electrical Permit

Building Permit

Interconnection approval

Utility easement

Crossing Agreement

Construction and Operations and Maintenance:

Contract for the Sale of Power Generation Equipment and Related Services between vendors and engineering, procurement, and construction contractor and Seller

Generator Interconnection Agreement

Retail Electric Service Agreement

Proof of Insurance

Construction Agreements:

Balance of Plant/Construction Services Agreement

Operations and Maintenance Agreements:

SUCH LIST MAY BE UPDATED PURSUANT TO SECTION 2.2.3

EXHIBIT 10

LEASES

(Seller to provide to Buyer before the Commercial Operation Date)

Memorandum of Solar Park Lease Agreement 1

Memorandum of Solar Park Lease Agreement 2

EXHIBIT 11

ENGINEER'S CERTIFICATIONS

ENGINEER'S CERTIFICATION

OF

OPERATIONS & MAINTENANCE POLICY

The undersigned _____, on behalf of himself/herself and _____ , hereinafter collectively referred to as "Engineer," hereby states and certifies to the Seller as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.

2. That Engineer has reviewed the Energy Sales Agreement, hereinafter referred to as the "Agreement," between Idaho Power as Buyer, and _____as Seller, dated _____.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as Idaho Power Company Facility No. _____ and is hereinafter referred to as the "Project."

4. That the Project, which is commonly known as the _____Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.

5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.

6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.

7. That Engineer has no economic relationship to the Design Engineer of this Project.

8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, said Project has been designed and built to appropriate standards, and adherence to said O&M Policy will result in the Project's producing at or near the design electrical output, efficiency and plant factor for the full Contact Term of _____ years.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

10. That Engineer certifies that the above statements are complete, true and accurate to the best of his/her knowledge and therefore sets his/her hand and seal below.

By _____

(P.E. Stamp)

Date _____

ENGINEER'S CERTIFICATION

OF

ONGOING OPERATIONS AND MAINTENANCE

The undersigned _____, on behalf of himself/herself and _____ hereinafter collectively referred to as "Engineer," hereby states and certifies to the Seller as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.

2. That Engineer has reviewed the Energy Sales Agreement, hereinafter referred to as the "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.

3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as Idaho Power Company Facility No. _____ and hereinafter referred to as the "Project".

4. That the Project, which is commonly known as the _____Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.

5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.

6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.

7. That Engineer has no economic relationship to the Design Engineer of this Project.

8. That Engineer has made a physical inspection of said Project, its operations and maintenance records since the last previous certified inspection. The Engineer certifies, based on the Project's appearance and the information provided by the Project, that the Project's ongoing O&M has been completed in accordance with said O&M Policy; that it is in reasonably good operating condition; and it is in the Engineer's professional opinion that if adherence to said O&M Policy continues, the Project will continue producing at or near its design electrical output, efficiency and plant factor for the remaining _____ years of the Agreement.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

10. That Engineer certifies that the above statements are complete, true and accurate to the best of his/her knowledge and therefore sets his/her hand and seal below.

By _____

(P.E. Stamp)

Date _____

ENGINEER'S CERTIFICATION

OF

DESIGN & CONSTRUCTION ADEQUACY

The undersigned _____, on behalf of himself/herself and _____ hereinafter collectively referred to as "Engineer", hereby states and certifies to Idaho Power as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.

2. That Engineer has reviewed the Energy Sales Agreement, hereinafter referred to as the "Agreement", between Idaho Power as Buyer, and _____as Seller, dated _____,_____.

3. That the cogeneration or small power production project, which is the subject of the Agreement and this Statement, is identified as Idaho Power Company Facility No _____ and is hereinafter referred to as the "Project".

4. That the Project, which is commonly known as the _____Project is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.

5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.

6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.

7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.

8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.

9. That the Project has been constructed in accordance with said plans and specifications, all

applicable codes and consistent with Prudent Electrical Practices as that term is described in the Agreement.

10. That the design and construction of the Project is such that with reasonable and prudent operation and maintenance practices by Seller, the Project is capable of performing in accordance with the terms of the Agreement and with Prudent Electrical Practices for a _____ year period.

11. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, in interconnecting the Project with its system, is relying on Engineer's representations and opinions contained in this Statement.

12. That Engineer certifies that the above statements are complete, true and accurate to the best of his/her knowledge and therefore sets his/her hand and seal below.

By _____

(P.E. Stamp)

Date _____

EXHIBIT 12

[RESERVED]

EXHIBIT 13

REQUIRED INSURANCE

The Seller shall secure and continuously carry insurance as specified within this Appendix for the term of the Agreement.

Insurance Requirements:

1. All insurance required by this Agreement shall be placed with an insurance company with an A.M. Best Company rating of A- or better.

2. If the insurance coverage required in this Appendix is cancelled, materially changed or lapses for any reason, the Seller will immediately notify Idaho Power in writing. This notice will advise Idaho Power of the specific reason for cancellation, material change or lapse and the steps being taken to comply with these Insurance Requirements. Failure to provide this notice and to comply with these Insurance Requirements within 5 days of the cancellation, material change or lapse will constitute a material breach and Idaho Power may terminate this Agreement.

3. Prior to the First Energy date and subsequently within 10 days of the annual anniversary of the Operation Date, the Seller shall provide a Certificate of Insurance in the name of Idaho Power Company and list Idaho Power Company as an Additional Insured Endorsement and Waiver of Subrogation Endorsement.

4. The Certificate of Insurance shall evidence the appropriate insurance coverage of Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to[$1,000,000,] each occurrence, combined single limit. The deductible for such insurance shall be consistent with current Insurance Industry Utility practices for similar property.

Seller shall be entitled to self-insure these coverages with approval of Idaho Power, which shall not be unreasonable withheld, delayed or conditioned.

1.5 Periodic Review. Idaho Power may review this schedule of insurance as often as once every two (2) years. Idaho Power may in its discretion require Seller to make reasonable changes to the policies and coverages described in this Exhibit to the extent reasonably necessary to cause such policies and coverages to conform to the insurance policies and coverages typically obtained or required for power generation facilities comparable to the Facility at the time Idaho Power's review takes place.

EXHIBIT 14

SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO IDAHO POWER

[DATE]

Idaho Power
1221 W Idaho St
Boise, ID 83702
Email: energycontracts@idahopower.com

To Whom it May Concern:

_____ ("Seller") hereby voluntarily authorizes Idaho Power's Transmission business unit to share Seller's interconnection information with marketing function employees of Idaho Power, including but not limited to those in Power Supply. Seller acknowledges that Idaho Power did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

_____

EXHIBIT 15

ATTACHMENTS

(Seller to provide to Buyer before the First Generation Date)

1. Site Map
2. As-Builts
3. Manufacturer’s performance warranties
5. [Other]

EXHIBIT 16

AS-BUILT SUPPLEMENT

EXHIBIT 17

[Reserved]

EXHIBIT 18

FORM OF CONSTRUCTION PROGRESS REPORT

Construction Progress Report
of
_____
("Seller")
provided to
[BUYER ENTITY]
("Buyer")
[Date]

Instructions.
Any capitalized terms used in this report which are not defined herein are defined in the Power Purchase Agreement by and between , ("Seller") and [BUYER ENTITY] dated _____, (the "Agreement").

Seller shall review the status of each milestone of the construction schedule for the Facility and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the milestones will be attained by their required dates. Such matters may include:

(i) Any material matter or issue arising in connection with a Permit, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of an Applicable Law, actual or threatened opposition to the granting of a necessary Permit, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any milestone.

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any milestone;

(iv) Any material change in Seller's schedule for initiating or completing any material aspect of Facility;

(v) The status of any matter or issue identified as outstanding in any prior Construction Progress Report and any material change in Seller's proposed actions to remedy or overcome such matter or issue.

For guidance, each "overview" subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each "recent activities" subsection shall include details of activities during the previous month. Each "expected activities" subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Construction Progress Report to [_____], together with all attachments and exhibits, with copies of this report delivered to [_____].

1. Executive Summary

Please provide an overview of the Facility, including technology, size, location, and ownership. Please provide a brief chronological cumulative summary of the major activities completed for each of the following aspects of the Facility. Include the date each item was added to the summary:

1.1 Milestones

1.2 Permits

1.3 Financing

1.4 Property Acquisition

1.5 Design and Engineering

1.6 Major Equipment procurement

1.7 Construction

1.8 Interconnection

1.9 Startup

2. Milestones

In this section, please include information on each significant milestone related to the Facility.

2.1 Milestone schedule

Please state the status and progress of each milestone. Provide the date of completion of completed milestone(s) and the expected date of completion of uncompleted milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

2.2 Remedial Action Plan (applicable if Seller fails to achieve a milestone by the anticipated milestone date)

Please describe in detail any delays (actual or anticipated) beyond the scheduled milestone dates. Describe the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, Facility construction, interconnection, or any other factor). Describe Seller's remedial action plan which shall include detailed plans to achieve the missed milestone and subsequent milestones.

3. Permits

In this section, please include information on each of the Permits required for the construction of the Facility and the status thereof. List the applicable government agency, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents or approvals, final documents or approvals, notice of determination, or issuance of permit. If the government agency maintains a website with information on the approval process for the Facility, please provide a link.

3.1 Environmental Impact Report/Statement (EIR/EIS) of Conditional Use Permit (CUP)

Please describe the environmental review process and each of the Permit(s) to be obtained for the Facility. Provide the status and completion date (expected or actual) of each significant activity in the process.

3.2 Other Permits

Please describe each of the other Permits to be obtained for the Facility. Provide the status and completion date (expected or actual) of each significant activity.

3.3 Recent Permit activities

Please describe in detail the Permit activities that occurred during the previous calendar month.

3.4 Expected Permit activities

Please list all Permit activities that are expected to be performed during the current calendar month.

4. Financing Activities

In this section, please include information on each separate phase of financing for the Facility. Include information on debt, equity, or federal or state loans or grants.

4.1 Overview of financing activities

Please provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

4.2 Recent financing activities

Please describe in detail the financing activities that occurred during the previous calendar month.

4.3 Expected financing activities

Please list the financing activities that are expected to be performed during the current calendar month.

5. Property Acquisition Activities

In this section, please include information on property acquisition or site control activities for the Facility.

5.1 Overview of property acquisition activities

Please provide a summary of the status and progress of each major property acquisition activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

5.2 Recent property acquisition activities

Please describe in detail the property acquisition activities that occurred during the previous calendar month.

5.3 Expected property acquisition activities

Please list the property acquisition activities that are expected to be performed during the current calendar month.

6. Design and Engineering Activities

In this section, please include information on the status of design and engineering for the Facility.

6.1 Overview of design activities

Please provide a summary of the status and progress of each major design or engineering activity, including dates of completion of significant activities and expected timing of future activities.

6.2 Recent design activities

Please describe in detail the design activities that occurred during the previous calendar month.

6.3 Expected design activities

Please list the design activities that are expected to be performed during the current calendar month.

7. Major Equipment Procurement

In this section, please include information on all major equipment to be procured for all portions of the Facility to be completed by Seller, including switchyards, substations and any other interconnection equipment, in addition to generating and auxiliary equipment.

7.1 Overview of major equipment procurement activities

For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item (to be) procured or delivered in each month.

7.2 Recent major equipment procurement activities

Please describe in detail the major equipment procurement activities that occurred during the previous calendar month.

7.3 Expected major equipment procurement activities

Please list the major equipment procurement activities that are expected to be performed during the current calendar month.

8. Construction Activities

In this section, please include information on the status of any construction-related factors that may affect the ability of the Facility to deliver the Facility Energy. Include information on the Facility infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other interconnection facilities that are the direct responsibility of the Facility.

8.1 Overview of major construction activities

Please provide a summary of the status and progress of each major construction activity for all portions of the Facility, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a Notice to Proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed or commissioned in each month.

8.2 Recent construction activities

Please describe in detail the construction activities that occurred during the previous calendar month.

8.3 Expected construction activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

8.4 EPC Contractor Progress Report

Please attach a copy of the progress reports received during the previous calendar month from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

8.5 Look-ahead construction schedule

Please provide a look-ahead construction schedule covering at least three months.

8.6 OSHA Recordables

Please list all OSHA recordables from the previous calendar month.

8.7 Work stoppages

Please describe any work stoppage from the previous calendar month and its effect on the construction schedule.

9. Interconnection Activities

In this section, please include information on interconnection-related factors that may affect the ability of the Facility to deliver Facility Energy. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of interconnection facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Facility construction information in Section 8), network upgrades, and grid outage or interconnection schedules.

9.1 Overview of interconnection activities

Please provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.

9.2 Recent interconnection activities

Please describe in detail the interconnection activities that occurred during the previous calendar month.

9.3 Expected interconnection activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

10. Startup

In this section, please include information on the status of activities related to preparation for Commercial Operation, including equipment testing, commissioning, release to operations, requirements of the grid operator, and any other activities that must be conducted before the Facility may deliver Energy to the grid or declare Commercial Operation.

10.1 Overview of startup activities

Please provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

10.2 Recent startup activities

Please describe in detail the startup activities that occurred during the previous calendar month.

10.3 Expected startup activities

Please list the startup activities that are expected to be performed during the current calendar month.

11. Other Information Reasonably Requested by Buyer

11.1 Litigation

Please list any communication received directly or indirectly from any third party that is in the nature of a threat of litigation, a litigation hold notice, a summons and complaint, or a commencement of a judicial, regulatory, or arbitration proceeding or investigation against Seller or concerning the Facility

11.2 [_____]

I, _____, on behalf of and as an authorized representative of _____, do hereby certify that any and all information contained in this Seller's Construction Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

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

EXHIBIT 19

FORM OF OPERATIONS REPORT

EXHBIT 20

[IDAHO POWER FORM OF WREGIS QRE AGREEMENT]

EXHIBIT 21

FORM OF LENDER CONSENT

CONSENT AND AGREEMENT

This Consent and Agreement (this "Consent") is made and entered into as of ___ _, 20__, by and between Idaho Power Corporation ("Buyer"), and _____ ("Lender").

RECITALS

A. _____ ("Seller"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "Loan Agreement"), with Lender in order to finance construction of a photovoltaic solar electric energy generating facility owned by Seller and located at ____ (the "Solar Project").

B. Seller and Buyer have entered into that certain Power Purchase Agreement, dated as of ____ (as amended, restated, supplemented or otherwise modified from time to time, the "PPA.

C. As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "Pledged Equity"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the PPA (the "Pledged PPA", collectively with the Pledged Equity, the "Assigned Interest") to Lender.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged PPA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged PPA Step-In. "Subsequent Seller Requirements" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of solar energy facilities of comparable size to the Facility and the ability perform all aspects of the PPA; (d) has agreed in writing to be bound by the PPA and to assume all of Seller's obligations under the PPA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged PPA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and

will be holding as of and after the date of assignment, the Project Development Security or Default Security, as applicable, and (iii) Buyer has not terminated this PPA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged PPA (a "Subsequent Seller"), may be substituted for Seller under the PPA and Buyer shall recognize such Subsequent Seller as its counterparty under the PPA and, subject to all rights and remedies of Buyer under the PPA, continue to perform its obligations under the PPA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the PPA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the PPA. The transfer of the PPA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the PPA, Lender may cure such default by the deadline provided therefor in the PPA. Buyer will not terminate the PPA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 11.1(l) of the PPA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the PPA, and (b) with respect to other defaults (except those set forth in Section 11.1(e)-(j) of the PPA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the PPA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 11.1(c) of the PPA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Solar Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. PPA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the PPA; provided that notwithstanding the foregoing, Buyer may terminate the PPA without Lender consent due to an uncured Event of Default under the PPA after the expiration of Lender's rights to cure under Section 4 hereof.

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the PPA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the PPA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as Exhibit A and the PPA has not been further amended, (v) Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA.

8. Replacement Agreement. If the PPA is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the PPA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the PPA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the PPA (other than the bankruptcy of Seller or a transfer of the Facility to Lender, or of Seller to

Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 9.2 of the PPA).

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:

With a copy to:

If to Buyer:

With copies to all of:

If to Lender:

With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY

FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the PPA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the PPA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

IDAHO POWER COPRPORATION

By: _____
Name:_____
Title:_____

[LENDER]

By _____
Its _____

ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between Idaho Power Corporation (as "Buyer"), and _____ (as "Lender"). _____ as "Seller" under the PPA (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the PPA, as and when required under the PPA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the PPA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the PPA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the PPA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the PPA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the PPA. Seller shall have no rights against Buyer, under the PPA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

By:
Its:
Date:

EXHIBIT 22

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE

This Estoppel Certificate ("Estoppel") is dated _____ __, 20__. Reference is made to that certain Renewable Energy Purchase Agreement, dated as of _____ (the "PPA"), by and between Idaho Power Corporation ("Buyer"), and _____ ("Seller") concerning output of a [wind/solar] energy generating facility owned by Seller and located in ____ (the "Project"). This certificate is delivered by Buyer to _____ ("Investor") and _____ as Administrative Agent (as defined in the Consent defined below) ("Administrative Agent"). Capitalized terms used but not defined herein are defined in the PPA.

Buyer certifies that, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the PPA have been duly authorized by all necessary action on the part of Buyer, (ii) each of this Estoppel and the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as Exhibit A and the PPA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the PPA, Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA][omit if estoppel delivered after COD], no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its

authorized signatory as of the date first set forth above.

IDAHO POWER CORPORATION

By: _____
Name:_____
Title:_____

Respondent shall review and redline the following draft agreement into the submitted proposal for the specific product type and ownership structure as defined in this RFP.

This draft Exhibit F is not comprehensive and does not constitute a binding offer, shall not form the bases for an agreement by estoppel nor otherwise, and is not conditions upon each party's receipt of all requirement management approvals (including final credit and legal approval) and all regulatory approvals. Any actions taken by a party in reliance on the terms set forth in this working draft or on statements made during negotiations pursuant to this working draft shall be at that party's own risk. Until this agreement is negotiated, approved by management, executed, delivered, and approved by all required regulatory bodies, no party shall have any other legal obligations, expressed or implied, or arising in any other manner under this working draft or in the course of negotiations.

BUILD TRANSFER AGREEMENT

dated as of

[__, 20__]

by and between

IDAHO POWER COMPANY

and

[DEVELOPER]

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Schedule 2.3(a)(i)(D) Firm Date Reports
Schedule 2.6(c) Pro-ratable Items
Schedule 3.4(b) Developer Consents
Schedule 3.5 No Proceedings (Developer)
Schedule 3.12 Affiliate Transactions
Schedule 4.2(b) Project Company Consents
Schedule 4.3(a) No Proceedings (Project Company)
Schedule 4.3(b) Force Majeure Notices
Schedule 4.9 Liabilities and Permitted Indebtedness
Schedule 4.10 Project Assets
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Schedule 4.12(a) Project Company Permits
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Schedule 4.13(a) Real Property Contracts
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Schedule 4.13(e) Zoning, Land Use, Condemnation
Schedule 4.14(a) Environmental Reports
Schedule 4.14(c) Environmental Consents and Liens
Schedule 4.20 Insurance
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Schedule 5.5 No Proceedings (Buyer)
Schedule 5.6(a) Buyer Permits
Schedule 5.6(b) Buyer Regulatory Approvals

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL) AND ALL REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED, DELIVERED AND APPROVED BY ALL REQUIRED REGULATORY BODIES, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.

BUILD TRANSFER AGREEMENT

THIS BUILD TRANSFER AGREEMENT (this "Agreement") is entered into as of [____], 202__ (the "Execution Date"), by and between Idaho Power Company, an Idaho Corporation ("Buyer"), and [_____], a [____] ("Developer"). Buyer and Developer are referred to individually as "Party" and, collectively, as the "Parties."

RECITALS

WHEREAS, Developer owns one hundred percent (100%) of the outstanding membership interests (the "Membership Interests") in [____], a special purpose entity (the "Project Company");

WHEREAS, the Project Company is developing the [_____] facility (the "Project") as further described in Exhibit A, a true and correct copy is attached hereto and incorporated into this agreement as if set forth in full at this point; and

WHEREAS, upon Mechanical Completion of the Project, Buyer desires to purchase all of the Membership Interests in the Project Company from Developer, subject to the terms and conditions set forth herein.

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

AGREEMENT

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Defined Terms.

Capitalized terms used in this Agreement have the meanings set forth below:

"1933 Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"[__%] ITC" means an ITC with respect to which the "energy percentage" (as defined in Section 48(a)(2) of the Code) is [___]percent ([__]%).][1]

"After-Tax Basis" means, with respect to any payment to be actually or constructively received by any Person, the amount of such payment (the "base payment") supplemented by a further payment (the "additional payment") to that Person so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all federal income taxes required to be paid by such Person in respect of the receipt or accrual of the base payment and the additional payment, using an assumed rate equal to the then-highest marginal U.S. federal income tax rate in effect applicable to corporations subject to tax under subchapter C of the Code (currently 21%, and ignoring state and local taxes), taking into account any federal income tax savings realized by the recipient as a result of the payment or the event giving rise to the payment, using an assumed rate equal to such marginal tax rate (and assuming the recipient has sufficient taxable income to fully utilize on a current basis any tax benefits resulting from the payment or the event giving rise to the payment), equals the amount required to be received.

"Accepted Update" shall have the meaning set forth in 7.4(b).

"Affiliate" means with respect to any Person, any other Person who, directly or indirectly, Controls such first Person or is Controlled by such first Person or is under common Control with such first Person.

"Agreement" shall have the meaning set forth in the preamble of this Agreement.

"Assignment and Assumption Agreement" shall have the meaning set forth in 2.5(a)(i).

"Authorized Signatory" means, for each of Developer and Project Company, any of [____].

"Auxiliary Load Guarantee" means the auxiliary load guarantee set forth in Appendix O.

"Auxiliary Load Test" means the test performed in accordance with the requirements of Appendix O, Section 7, and Appendix A and related Design Documents to determine whether the Auxiliary Load Guarantee has been achieved.

"Availability" shall have the meaning set forth in Appendix O.

"Availability Guarantee" means the availability guarantee set forth in Appendix O.

"Availability Test" means the test performed in accordance with the requirements of Appendix O, and Appendix A and related Design Documents to determine whether the Availability Guarantee has been achieved.

"Bankruptcy Code" means the United States Bankruptcy Code, as in effect from time to time.

"Bankruptcy Laws" shall have the meaning set forth in 25.1(h).

"Base Purchase Price" shall have the meaning set forth in 2.6(a).

"Benefit Plan" means any employee benefit plan, as that term is defined in Section 3(3) of ERISA, or other material pension, bonus, profit sharing, stock option or other agreement or arrangement providing for employee remuneration or benefits, including a multiemployer plan, as that term is defined in Section 4001(a)(3) of ERISA.

[1] Note to Bidders: For storage projects co-located with solar.

"Business Day" means any day other than a Saturday, Sunday or other day on which banks are authorized or required to be closed in Boise, Idaho.

"Buydown Amount" shall have the meaning set forth in 20.3(b).

"Buydown Right" shall have the meaning set forth in 20.3(b).

"Buyer" shall have the meaning set forth in the preamble to the Agreement.

"Buyer Consents" shall have the meaning set forth in 5.4(b).

"Buyer Default" shall have the meaning set forth in 25.2.

"Buyer Design Review Parties" shall have the meaning set forth in 14.2(a).

"Buyer Indemnified Parties" means Buyer and its Affiliates (including, after the Closing, Project Company) and their respective directors, officers, employees, and agents.

"Buyer Material Adverse Change" means any change in condition after the Execution Date that actually has, or is reasonably likely to have, a significant adverse effect on: (a) the validity or enforceability of this Agreement or any of the other Transaction Documents as against Buyer; or (b) the performance of or the ability of Buyer to perform its obligations under the Transaction Documents to which it is a party.

"Buyer Obligation" shall have the meaning set forth in 11.2.

"Buyer Permits" shall have the meaning set forth in 5.6(a).

"Buyer's Knowledge" means, as of the date on which any representation and warranty or other matter qualified by Buyer's Knowledge is required to be made by Buyer, the actual knowledge, after reasonable inquiry of the employees of the Buyer or any of its Affiliates who are responsible for, or have direct involvement, in the subject matter of the representation and warranty or other matter involved, of any of one or more of the following persons (and any successor person holding the same title or the functional equivalent and having responsibility for the transaction contemplated by this Agreement): [_____].

"Buyer's Representative" means the natural Person designated as such by Buyer pursuant to Section 9.2(a), which shall initially be [_____].

"Buyer-Caused Delay" shall mean an actual delay to the critical path of any portion of the Work that in turn delays the completion of such Work past any applicable deadline established by this Agreement or the EPC Agreement (as applicable) caused solely by Buyer's failure to respond in accordance with Section 9.4. For the avoidance of doubt, where this Agreement or the EPC Contract sets forth a period of time for review, approval or inspection by Buyer or "Owner," as such term is defined under the EPC Contract, Buyer shall not be deemed to have delayed the critical path of the Work until the date that occurs after the date by which Buyer or "Owner," as the case may be, was required to act.

"Buyer-Caused Delay Costs" shall have the meaning set forth in 2.6(d).

"Buyer-Initiated Change" shall have the meaning set forth in 12.2(b).

"Buyer-Initiated Change Order Costs" shall have the meaning set forth in 2.6(e).

"Calendar Quarter" means any of four quarters in a standard calendar year, specifically Quarter 1 is January 1 – March 31, Quarter 2 is April 1 – June 30, Quarter 3 is July 1 – September 30, and Quarter 4 is October 1 – December 31.

"Capacity Guarantee" means the capacity guarantee set forth in Appendix O.

"Capacity Test" means the test performed in accordance with the requirements of Appendix O, and Appendix A and related Design Documents to determine whether the Capacity Guarantee has been achieved.

"CEII" means Critical Energy/Electric Infrastructure Information, as defined by the Code of Federal Regulations, Title 18, Section 388. CEII includes both Critical Energy Infrastructure Information and Critical Electric Infrastructure Information. As used in this Agreement, Critical Energy Infrastructure Information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Contains detail about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; (iv) Does not simply give the general location of the critical infrastructure.

"Certificate of Final Completion" shall have the meaning set forth in 16.4(a).

"Certificate of Substantial Completion" shall have the meaning set forth in 16.3(a).

"Change" means any alteration of the Work whether by way of addition, deletion, modification, substitution or omission as authorized in accordance with Section 12.1, but shall not include any instruction to the extent that such instruction is issued as a result of any breach by Developer of this Agreement or otherwise to require Developer to fulfill its obligations under this Agreement. Changes shall include changes to Scope of Work, Project Schedule, and Purchase Price. Re-performance of any Work required to rectify or recover Work that is necessary due to Developer's (or its Contractor's or any Subcontractor's) negligence or breach of this Agreement shall not constitute a Change.

"Change in Law" means (i) the enactment, adoption, promulgation, modification, replacement, successor or repeal or any change in application, after the Execution Date of any applicable Law; (ii) the imposition of any material conditions on the issuance or renewal of any applicable Permit after the Execution Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation); (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority; or (iv) revocation of any tax credit, which establishes requirements or revokes beneficial laws or rules affecting the value or availability of tax credits, owning, supplying, constructing, installing, operating, or maintaining the Project, or other performance of the Parties' obligations hereunder or which has a material adverse effect on the cost to either Party of performing such obligations..

"Change of Control" shall mean:

(a) with respect to any Person, the occurrence of any one of the following with respect to such Person: (i) the consolidation with or merger into any other Person by such Person or by any other Person, or (ii) a direct or indirect assignment, conveyance, transfer, lease, exchange, conversion or other disposition of the equity interests in such Person or any other Person, or in either case the voting rights with respect thereto; in either case, as a result of

which the Person or Persons that Control, directly or indirectly, such Person shall cease to, directly or indirectly, Control such Person; and

(b) with respect to Developer, Developer Parent ceases to be an Affiliate of Developer.

"Change Order" means any order identified as a "Change Order" and issued by Buyer to Developer that affects the Work, and may affect the Project Schedule, and in accordance with the terms of this Agreement.

"Change Order Notice" means the written notice of Change Order issued to Developer by Buyer pursuant to ARTICLE 12, substantially in the form set forth in Appendix N-3.

"Change Order Request" means the written request for a Change Order issued to Buyer by Developer pursuant to ARTICLE 12, substantially in the form set forth in Appendix N-2.

"Charge Rate Guarantee" means the charge rate guarantee set forth in Appendix O.

"Charge Rate Test" means the test performed in accordance with the requirements of Appendix O, and Appendix A and related Design Documents to determine whether the Charge Rate Guarantee has been achieved.

"Claim" or "Claims" means any indemnity, demand, demand letter, claim, litigation, cause of action, notice of noncompliance or violation, or other proceeding.

"Closing" shall have the meaning set forth in 2.7(a).

"Closing Date" shall have the meaning set forth in 2.7(a).

"Code" means the Internal Revenue Code of 1986, as the same may be amended from time to time, including any amendments or any substitute or successor provisions thereto.

"Confidential Information" shall have the meaning set forth in 29.1(a).

"Confidentiality Affiliates" shall have the meaning set forth in 29.1(a).

"Construction Period Credit Support" shall have the meaning set forth in 6.1(b).

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

"Contractor" shall mean the primary contractor, as approved by Buyer, engaged by Project Company pursuant to the EPC Contract.

"Contractor Drawings and Manuals" means all drawings and information developed by Contractor and Subcontractors and provided to Developer in connection with Contractor's and any Subcontractor's obligations under the EPC Contract, all in accordance with the requirements of the Agreement.

"Contractor's Safety Assurance Program" means that certain safety program created and administered by Contractor pursuant to the EPC Contract, to be attached as Appendix M.

"Control" of any Person means the possession, directly or indirectly, of the power either to (a) vote fifty percent (50%) or more of the equity, capital or profits, or other interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct

or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any secured lender of such Person.

"Construction Costs" the amounts actually incurred by the Project Company, Developer or its Affiliates for payments made under the EPC Contract.

"Corrupt Practices Laws" means (i) the Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95-213, §§101-104), as amended, and (ii) any other applicable law relating to bribery, kick-backs or anti-corruption.

"Credit Support" shall mean [(a) cash collateral, (b) a Payment and Performance Bond, or (c) a letter of credit in the form of Exhibit E,][2] attached hereto, from a Creditworthy Bank.

"Creditworthy Bank" shall mean a U.S. state or federally chartered commercial bank (or U.S. branch of a foreign commercial bank) which has (a) assets of at least ten billion dollars ($10,000,000,000) and (b) senior unsecured long term debt or deposits that are rated at least "A-" (or its current equivalent) by S&P or Fitch and at least "A3" (or its then current equivalent) by Moody's.

"Critical Milestones" means certain Milestones, set forth in Appendix J, designated in the Project Schedule as milestones that are critical to the ability of the Project to achieve Substantial Completion by the Outside Closing Date.

"Critical Milestone Completion Date" means the completion date, set forth in Appendix J, by which Developer will achieve the corresponding Critical Milestone.

"Data Room" means the virtual data room set up for the Project Company and Project, accessible at [___].

"Defect" shall have the meaning set forth in 19.1(a)(i).

"Deferred Permit" means, as of any date, all Project Company Permits that have not yet been obtained, (a) the procurement of which is not required to have occurred on or before such date by applicable Law or the requirements of any Project Company Contract and (b) as to which Developer has a reasonable expectation that such Project Company Permits will be obtained in the ordinary course of business.

"Delay Liquidated Damages" means either Mechanical Completion Liquidated Damages or Substantial Completion Liquidated Damages, or both.

"Delay Liquidated Damages Cap" shall have the meaning set forth in Section 20.2(b).

"Design Documents" shall have the meaning set forth in 14.2(a)

"Developer" shall have the meaning set forth in the preamble of this Agreement.

"Developer Consents" shall have the meaning set forth in 3.4(b).

"Developer Default" shall have the meaning set forth in 25.1.

"Developer Firm Date Conditions" shall mean those conditions to achievement of the Firm Date, as set forth in 2.3(a)(iii).

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[2] Note to Bidders: Forms of credit support remain subject to IPC review.

"Developer IT Asset" means all of the software, computer systems, workstations, routers, hubs, switches, circuits, servers and other information technology equipment of the Developer used in connection with the Project Company or the Project Assets.

"Developer Party" means each of Developer, Contractor, any Subcontractor, and, if applicable, Developer's guarantor.

"Developer Security" shall have the meaning set forth in 25.1.

"Developer's Equipment" means all of the equipment, materials, apparatus, structures, tools, consumables, supplies and other goods provided and used by Developer, Contractor, and any Subcontractors for performance of the Work but which are not intended to be incorporated into the Project.

"Developer's Knowledge" means, as of the date on which any representation and warranty or other matter qualified by Developer's Knowledge is required to be made by Developer, the actual knowledge, after reasonable inquiry of the employees of the Developer or any of its Affiliates who are responsible for, or have direct involvement, in the subject matter of the representation and warranty or other matter involved, of any of one or more of the following persons (and any successor person holding the same title or the functional equivalent and having responsibility for the Project or transaction contemplated by this Agreement): [_____].

"Developer's Parent" means [____].

"Developer's Representative" shall have the meaning set forth in 8.13(a).

"Developer-Initiated Change" shall have the meaning set forth in 12.2(a).

"Dollars" and the "$" symbol means the lawful currency of the United States of America.

"Draft Manuals" shall have the meaning set forth in 8.9(c).

"Easements" shall have the meaning set forth in 4.13(b).

"Emerging Contaminants" shall mean chemicals and other substances that are not currently regulated under any Environmental Law, have been discovered in natural streams, and potentially cause deleterious effects in aquatic life, including vegetation and water quality, at environmentally relevant concentrations, including but not limited to per- and polyfluoroalkyl substances.

"EMS" means the control and monitoring system, including central computer, remote PC system and ancillary communication terminals and cables installed inside individual storage facility controllers, as well as inside central control location, as more fully described in Appendix A.

"Energy Capacity" shall have the meaning set forth Appendix O.

"Environmental Law" means any applicable Law that is in effect as of the Execution Date and relates to Regulated Materials, pollution, occupational health and safety (to the extent such relates to exposure to Regulated Materials), or the protection of the environment, natural resources, or wildlife, including, without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA"), (b) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (the "Clean Water Act"), (d) the Clean Air Act, 42 U.S.C. § 7401 et seq. ("CAA"), (e) the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. § 5101 et seq., (f) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., (g) the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through

2629, (h) the Oil Pollution Act, 33 U.S.C. § 2701 et seq., (i) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (j) the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j, (k) the Federal Insecticide, Fungicide, & Rodenticide Act, 7 U.S.C. § 136 et seq., (l) the Endangered Species Act, 16 U.S.C. § 1531 et seq., (m) the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., (n) the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 et seq., (o) the National Historic Preservation Act, 16 U.S.C. §§ 470a et seq., (p) the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., (q) the Rivers and Harbors Act of 1899, (r) state equivalents to items (a) through (q), and (s) applicable implementing rules and regulations of Governmental Authorities for items (a) through (r).

"EPC Change Order" means any order identified as a "Change Order" and issued by the Project Company to Contractor, pursuant to the EPC Contract.

"EPC Contract" means that certain Engineering, Procurement, and Construction Contract, to be entered into by and between the Project Company and Contractor for the engineering, procurement, construction, and commissioning of the Project, in form and substance acceptable to Buyer.

"EPC Contract Price" means the total amount that would be due to Contractor under the EPC Contract for the full satisfaction of all of Contractor's obligations thereunder, including the completion of the Project at the Planned Capacity.

"Equipment" means the equipment relating to the Project required for Developer to complete the Work, as described in Appendix E, excluding any Developer's Equipment.

"Estoppels" shall have the meaning set forth in 2.5(a)(vii).

"Execution Date" shall have the meaning set forth in the preamble to this Agreement.

"Final Completion" means the Project demonstrates that all of the Final Completion Criteria have been satisfied in accordance with the requirements of this Agreement.

"Final Completion Criteria" shall have the meaning set forth in Appendix P.

"Final Performance Test Report" shall have the meaning set forth in 15.5(b).

"Final Purchase Price Allocation" shall have the meaning set forth in 17.3.

"Firm Date" shall have the meaning set forth in 2.3(a).

"Firm Date Deadline" shall have the meaning set forth in 2.11(a)(viii).

"Firm Date Reports" shall mean those Reports specifically identified on Schedule 2.3(a)(i)(D).

"Force Majeure" means an event or circumstance which causes a delay to the critical path of any portion of the Work that in turn delays the completion of such Work, but only if and to the extent such event or circumstances (a) was not reasonably foreseeable, (b) is not within the reasonable control of or caused by the fault or negligence of the Party affected thereby, (c) is such that the affected Party has been unable to remedy, prevent, or overcome the event or circumstance, despite having taken commercially reasonable precautions and measures in order to prevent or avoid such event or circumstance or mitigate the effect of such event or circumstance, and (d) which by the exercise of reasonable diligence consistent with Prudent Industry Practice such party could not reasonably have been expected to avoid. To the extent that such event satisfies the requirements set forth in the preceding sentence, Force Majeure may include: acts of God, earthquake, volcano, tornado, or flood; sabotage, terrorism, war, revolution, civil disturbance, expropriation, confiscation or nationalization, blockades, embargoes or sanctions (for the avoidance of doubt, excluding the

imposition of taxes, duties, and tariffs); long-term port of entry closure, rationing or allocation, at the request or insistence of any Governmental Authority; Judgment by court order of a Governmental Authority; emergencies declared by a Governmental Authority requiring shutdown or forced curtailment of the Project; or worldwide, national or regional labor disputes. Regardless of the preceding sentences, none of the following shall constitute Force Majeure, except to the extent caused by an independent, identifiable event of Force Majeure causing such condition: (A) delay or failure by Developer or Contractor to obtain any Project Company Permit, other than the delay or failure to obtain Project Company Permits by: (1) revocation, stay, or similar action by a Governmental Authority of a Project Company Permit after issuance thereof by a Governmental Authority, or (2) the failure of a Governmental Authority to comply with rules, procedures, or other Law applicable to such Governmental Authority; (B) delay or failure by Developer or Contractor to obtain permission to operate or any other required approval to interconnect to the grid; (C) shipping accidents or unavailability of preferred shipping methods; (D) supply chain issues; or (E) delays in customs clearance or delays or other problems associated with the issuance, suspension, renewal, administration or withdrawal of, or any other problem directly or indirectly relating to, any governmental approval or the applications therefor, including but not limited to any such delays or failures with respect to the Withhold Release Order issued by U.S. Customs and Border Protection on June 24, 2021 pursuant to Section 307 of the Tariff Act of 193.

"Full Notice to Proceed" shall mean the notice to proceed, issued pursuant to the EPC Contract, that authorizes the Contractor to begin the full scope of work of the EPC Contract and is not limited or contingent upon the satisfaction of any condition.

"Fundamental Representation" means any of Sections 3.1 (Organization), 3.2 (Authority), 3.3 (Binding Agreement), 3.4 (No Conflicts), 3.7 (Membership Interests),4.1 (Organization of Project Company), 4.2 (No Conflicts of Project Company), 4.5 (No Prior Business of Project Company), 4.7 (Subsidiaries and Joint Ventures), 5.1 (Organization), 5.2 (Authority), 5.3 (Binding Agreement), and 5.4 (No Conflicts).

"GAAP" means United States generally accepted accounting principles.

"Gap Warranty" shall have the meaning set forth in 19.1(c).

"Governmental Authority" means any supranational, federal, state, or other political subdivision thereof, including any municipality, township, and county, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing, in each case, having jurisdiction over Developer, Contractor, any Subcontractor, Buyer, the Project, or this Agreement or any other Transaction Document.

"Guaranteed Roundtrip Efficiency Liquidated Damages" shall have the meaning set forth in 20.3(b).

"Guaranteed Availability Liquidated Damages" shall have the meaning set forth in 20.3.

"Guaranteed Capacity Liquidated Damages" shall have the meaning set forth in 20.3.

"Guaranteed Power Capacity" shall have the meaning set forth in Appendix O.

"Guaranteed Rated Energy Capacity" shall have the meaning set forth in Appendix O.

"Guaranteed Substantial Completion Date" shall have the meaning set forth in 20.2(b).

"Indebtedness" means (a) any indebtedness for borrowed money or issued in substitution for or exchange of indebtedness for borrowed money, (b) any indebtedness evidenced by any note, bond, debenture, or other debt security, (c) any indebtedness for the deferred purchase price of property or services, (d) Liabilities under any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, or other similar agreement designed to protect the Project Company against fluctuations in interest rates or other currency fluctuations, (e) all Liabilities with respect to any commitment by which the Project Company assures a creditor against loss (including contingent reimbursement obligations with respect to letters of credit) and all other Liabilities guaranteed in any manner by the Project Company, (f) any obligations under capitalized leases, conditional sales contracts, and other similar title retention instruments whether short term or long term, (g) any indebtedness secured by a Lien on any property or assets of the Project Company and/or any off-balance sheet financings.

"Indemnified Party" shall have the meaning set forth in 22.1(c).

"Indemnifying Party" shall have the meaning set forth in 22.1(d).

"Indemnity Period" shall have the meaning set forth in 22.4.

"Independent Engineer" the engineering firm selected by the Parties for the Project from the list of mutually acceptable nationally-recognized engineering firms included in Appendix Q,

"Initial Credit Support" shall have the meaning set forth in 6.1(a).

"Interconnection Agreement" means an agreement for interconnection services, by and between Project Company and Transmission Provider, in form and substance reasonably acceptable to Buyer and shall, at a minimum, provide Network Resource Interconnection Service.

"Interconnection Costs" means costs, including transmission customer interconnection costs, transmission provider interconnection costs, network upgrades, and affected systems costs, if any, charged by the Transmission Provider, applicable balancing authority, or operators of affected systems, or costs incurred by the Developer, Project Company, or Contractor in connection with the interconnection of the Project.

"IPUC" means the Idaho Public Utility Commission.

"IPUC Approval" shall have the meaning set forth in Section 2.1.

"IRS Notice" means IRS Notice 2018-59, 2018-28 I.R.B. 196 (as modified by Notice 2019-43, 2019-31 I.R.B. 487, Notice 2020-41, 2020-25 I.R.B. 954, and Notice 2021-41, 2021-29 I.R.B.), and any subsequent amendment or modification thereto or successor guidance.

["ITC" means the energy credit pursuant to Section 48 of the Code.

"ITC Representations" means the representations in Section 4.17(k) and in the Beginning of Construction Certificate.][3]

"Judgment" means any judgment, order, award, injunction, writ, or decree of any Governmental Authority.

[3] Note to bidders: This would apply to any storage projects co-located with solar projects.

"Key Personnel" means, with respect to Developer, Contractor, and any Major Subcontractor performing a material portion of the Work, a project executive, a project manager, a project senior superintendent, and a project superintendent for the Project.

"Late Payment Rate" means an amount equal to the Prime Rate plus 200 basis points; provided, that in no event shall the Late Payment Rate exceed the maximum allowable usurious rate permitted by Applicable Law.

"Law" means all laws (including each Environmental Law), statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of any Governmental Authority having the force and effect of law, and as to any Person, the organizational, or governing documents of such Person.

"Lender" means the lender and/or equity investor (including any trustee or agent on behalf of such lender and/or equity investor (including tax equity investors)) of any Party or any of its Affiliates (including Project Company) directly or indirectly providing development, bridge, construction and/or permanent equity and/or debt financing or refinancing of the development, construction, ownership, leasing, operation or maintenance (including working capital) of the Project, whether that financing or refinancing takes the form of private or public debt or equity or any other form, and any Person providing interest rate protection agreements to hedge any of the foregoing obligations.

"Level 3 Project Schedule" shall mean a project coordination schedule using an integrated critical path methodology that includes detailed input from the project management team. The Level 3 Project Schedule shall include, at a minimum, all major milestones, including the Critical Path Milestones, and all material elements of design, engineering, procurement, construction, testing, commissioning, and/or start-up.

"Liabilities" means all Claims including those relating to Environmental Laws, demands, damages, losses, Taxes, liabilities, or judgments, including all interest, penalties, fines and other sanctions, and any reasonable costs or expenses in connection therewith, including attorneys' and consultants' fees and expenses.

"Lien" means any mortgage, pledge, security interest, encumbrance, option, defect, lien, charge, or other similar right of any Person of any kind, including any lien or charge arising by statute or other law.

"Made Available" shall mean that the materials (a) with respect to materials required to be provided on or prior to the Execution Date, the Firm Date, or the Closing Date, (i) were posted to the Data Room or otherwise provided by Developer at least seven (7) days prior to the relevant date or (ii) were otherwise received by Buyer at least seven (7) days prior to the relevant date, and (b) with respect to other materials, were posted to the Data Room or otherwise provided by Developer, with notice thereof provided to Buyer's Representative.

"Major Equipment" means the electrochemical cells consisting of an anode and a cathode separated by an electrolyte, power converters/inverters with controller, battery energy management system, EMS, and transformers and switchgears. forming part of the Project.

"Major Equipment Warranties" means those certain manufacturer warranties for the Major Equipment set forth in Appendix E.

"Major Subcontractors" means [___]and those other Subcontractors supplying Major Equipment.

"Major Supply Agreements" means the agreements pursuant to which the Major Subcontractors will supply the Major Equipment, specifically: [__], forms of which are attached hereto as Exhibit H.

"Manager" means [_____].

"Material Adverse Change" means any change in condition after the Execution Date that has, or is reasonably likely to have, a significant adverse effect on: (a) the validity or enforceability of this Agreement, the Transaction Documents, or any of the other Project Company Contracts; (b) the business, assets, prospects, operations, property, or condition (financial or otherwise) of the Developer, Project Company, Contractor, any Major Subcontractor, any guarantor, or the Project; (c) the Project's ability to operate and deliver energy to the System; (d) the performance of or the ability of Developer, Project Company, Contractor, any Subcontractor, or any guarantor, if applicable, to perform its respective obligations under the Transaction Documents or the Project Company Contracts to which it is a party; or (e) Developer fails to meet the Credit Support requirements of Article 6. For the avoidance of doubt, the following will not be considered when determining whether a Material Adverse Change has occurred: any change, event, effect or occurrence (or changes, events, effects, or occurrences taken together) resulting from (i) any change generally affecting the international, national, or regional electric storage, supply chain, transmission, or distribution industry; (ii) any change generally affecting the international, national, or regional wholesale or retail markets for or costs of electric power; (iii) any change generally affecting the energy storage business; (iv) any change in general regulatory or political conditions, including any engagements of hostilities, acts of war, or terrorist activities or changes imposed by a Governmental Authority associated with additional security; (v) any change in GAAP or other applicable accounting or auditing standards or industry standards; (vi) any change in the financial, banking, or securities markets (including any suspension of trading in, or limitation on prices for, securities on the New York Stock Exchange, American Stock Exchange, or Nasdaq Stock Market), or any change in the general national or regional economic financial conditions; or (vii) any actions or omissions required to be taken or not taken by Developer or the Project Company in compliance with this Agreement, the Transaction Documents, or otherwise consented to by, or at the written request of, Buyer pursuant to this Agreement.

"Material Update" shall have the meaning set forth in 7.4(b).

"Materials" means the Intellectual Property, equipment, machinery, apparatus, materials, articles, and things of all kinds to be provided and incorporated into the Project by Developer, Contractor and the Subcontractors pursuant to this Agreement (including spare parts and tools to be supplied hereunder), other than the Equipment.

"Mechanical Completion" means all of the Mechanical Completion Criteria has been satisfied in accordance with the requirements of this Agreement.

"Mechanical Completion Criteria" shall have the meaning set forth in Appendix P.

"Mechanical Completion Delay Liquidated Damages" shall have the meaning set forth in 20.2(a).

"Membership Interests" shall have the meaning set forth in the recitals to the Agreement.

"Milestone" shall have the meaning set forth in 11.1.

"Milestone Completion Dates" shall have the meaning set forth in 11.1.

"Moody's" means Moody's Investors Service, Inc.

"Mutual Firm Date Conditions" shall mean those conditions to achievement of the Firm Date, as set forth in 2.3(a)(i).

"Network Resource Interconnection Service" shall have the meaning set forth in the Transmission Provider's Open Access Transmission Tariff.

"Noise Guarantee" means the noise guarantee set forth in Appendix O.

"Noise Test" means the test performed in accordance with the requirements of Appendix O, and Appendix A and related Design Documents to determine whether the Noise Guarantee has been achieved.

"Operating Period Credit Support" shall have the meaning set forth in 6.1(d).

"Outside Closing Date" shall have the meaning set forth in 2.11(a)(v), as may be extended pursuant to Section 20.2(a).

"Party" and "Parties" shall have the meanings set forth in the preamble of this Agreement.

"Performance Guarantee Tests" means the Auxiliary Load Test, the Availability Test, the Capacity Test, the Charge Rate Test, the Noise Test, the Power Factor Test, the Ramp Rate Test, the Response Time Test, and the Roundtrip Efficiency Test, all as set forth in Appendix O and intended, in each case, to determine whether the respective Performance Guarantees have been achieved.

"Performance Guarantees" means the Auxiliary Load Guarantee, the Availability Guarantee, the Capacity Guarantee, the Charge Rate Guarantee, the Noise Guarantee, the Power Factor Guarantee, the Ramp Rate Guarantee, the Response Time Guarantee, and the Roundtrip Efficiency Guarantee, in each case as set forth in Appendix O.

"Performance Liquidated Damages" means the Guaranteed Capacity Liquidated Damages, the Guaranteed Roundtrip Efficiency Liquidated Damages, and the Guaranteed Availability Liquidated Damages.

"Performance Liquidated Damages Cap" shall have the meaning set forth in 20.3.

"Permit" means any written authorization, approval, consent, waiver, exception, variance, order, notice, license, filing, registration, ruling, permit, tariff, certification, exemption, and other action by, to, or with any Governmental Authority.

"Permitted Equity Exceptions" means (a) restrictions on transfer of the Membership Interests under any applicable federal, state, or foreign security laws and (b) the Liens described in clauses (d) and (g) of the definition of Permitted Liens.

"Permitted Indebtedness" means (a) any Indebtedness that is (or will be) released on or prior to Closing and (b) any Indebtedness set forth on Schedule 4.9.

"Permitted Liens" means any: (a) Lien for Taxes (i) not yet due and payable, or (ii) being contested in good faith and for which adequate reserves have been established and held by the Project Company in accordance with GAAP; (b) easements or other encumbrances on Real Property affecting the Project required to be granted (i) pursuant to applicable Laws or (ii) by order of a Governmental Authority; (c) mechanics', materialmen's (and other similar liens for construction in progress), carriers', workers', repairers', and other similar Liens arising or incurred in the ordinary course of business which are (i) not yet due and payable or (ii) being contested in good faith and for which adequate reserves have been established and held by the Project Company in accordance with GAAP;

(d) Liens created pursuant to, or as a result of the existence of, this Agreement or any Transaction Document; (e) any Liens approved or consented to in writing by Buyer, including any Liens expressly granted under, or created by, existing, or pursuant to, the terms and conditions of the Project Company Contracts or Project Company Permits included in Developer's disclosure schedules as of the Execution Date or in any Accepted Update; (f) Liens relating to any Contract executed with a Lender; (g) any Lien that is (or will be) released on or prior to Closing; (h) minor defects, easements, rights-of-way, restrictions, and other similar encumbrances and minor imperfections in title that do not impair the affected property or impair the development, construction, commissioning, ownership, and commencement of operation of the Project at the Site; (i) any fee mortgage (other than where the applicable Real Property is a fee) or ground lease or similar Lien that is superior to the interest granted under the applicable Real Property Contract but is subject to a fully executed and recorded non-disturbance agreement reasonably acceptable to Buyer; (j) exceptions to title listed in the Title Policy and approved by Buyer; and (k) Liens arising by, through, or under Buyer.

"Person" means any natural person, corporation, general or limited partnership, limited liability company, firm, joint venture, estate, association, trust, government, governmental agency, or any other entity, whether acting in an individual, fiduciary, or other capacity.

"Phase I ESA" shall have the meaning set forth in 2.3(a)(ii)(E).

"Phase II ESA" shall have the meaning set forth in 2.3(a)(ii)(E).

"Planned Roundtrip Efficiency Rate" means [____] ([__]%]).

"Planned Capacity" means [____] megawatts ([_] MW) of storage capacity at [____] ([_]) hours of continuous discharge.

"Power Factor Guarantee" means the power factor guarantee set forth in Appendix O.

"Power Factor Test" means the test performed in accordance with the requirements of Appendix O, and Appendix A and related Design Documents to determine whether the Power Factor Guarantee has been achieved.

"Pre-Closing Tax Period" means any taxable year or other taxable period ending on or before the Closing Date.

"Pre-Closing Taxes" means (a) any Taxes imposed on or with respect to the Project Company, the Project Assets, or the Project with respect to any taxable period ending on or prior to the Closing Date and, in the case of any Straddle Period, the portion of such period ending on and including the Closing Date; (b) any Taxes imposed on or with respect to the Developer, Contractor, any Subcontractor, or any of their respective Affiliates; (c) any Taxes for which Developer is responsible under Section 17.2 and Section 17.7; (e) any Claims and Liabilities (including any Tax Benefits Loss) attributable to a breach by Developer of any of its representations, warranties, or covenants pursuant to Section 4.17, Section 4.18, or Article 17; (f) any Taxes and Tax Benefits Losses attributable to a breach by Developer of any of its representations, warranties, or covenants in this Agreement; (g) Taxes imposed on Buyer or any of its Affiliates, as a transferee or successor, by contract or pursuant to any Law, which Taxes relate to an event or transaction occurring prior to the close of business on the Closing Date; (h) payment of any Tax as a result of any obligation to indemnify any other Person or as a result of any obligation under any agreement or arrangement (other than any obligation or indemnification for Tax pursuant to any Project Company Contract relating to a Tax period beginning after the Closing Date or the portion of any Straddle Period beginning after the Closing Date) entered into on or prior to the Closing Date; (i) any withholding Taxes on Buyer or any of its Affiliates

resulting from the transactions contemplated by this Agreement to the extent not withheld pursuant to Section 2.7; and (j) any reasonable costs and expenses associated with the investigation, review, remediation, and resolution of any of the foregoing items described in clauses (a) to (i), including reasonable legal fees and expenses attributable thereto.

"Pre-Closing Liabilities" means each of the following with respect to the Developer or, on and prior to the Closing Date, the Project Company:

(a) Liabilities from any violation of applicable Law (including Environmental Laws) at the Site or with respect to the Project on or prior to the Closing Date and Liabilities from any violations of applicable Law (including Environmental Laws) at the Site or with respect to the facility on or prior to Final Completion of the Project to the extent caused by Developer, Subcontractors, or any of its or their Affiliates or representatives;

(b) Liabilities from any environmental condition on or under the Site existing on or prior to the Closing Date and Liabilities from any environmental condition on or under the Site existing on or prior to Final Completion of the Project to the extent caused or worsened by Developer, Subcontractors, or any of its or their Affiliates or representatives, in each case, including remediation costs, natural resource damages, bodily injury, or property damage;

(c) Liabilities from off-site transportation, disposal, recycling, or storage of any hazardous substances or substance or material controlled by an Environmental Law on the Site on or prior to the Closing Date and Liabilities from off-site transportation, disposal, recycling, or storage of any hazardous substances or substance or material controlled by an Environmental Law on the Site on or prior to Final Completion of the Project to the extent caused by Developer, Subcontractors, or any of its or their Affiliates or representatives, in each case, including Liabilities related to remediation, natural resource damages, bodily injury, or property damage;

(d) Liabilities related to any employee benefit plan of Developer (or its Affiliates (including ERISA Affiliates)) or any of its contractors with respect to its or their current or former employees or contractors;

(e) Liabilities under the Project Contracts, the Real Property Contracts, and Project Permits incurred or arising prior to Final Completion of the Project;

(f) Liabilities related to the development, engineering, procurement, construction, commissioning, and operation, maintenance, repair, or use of the Project prior to Final Completion of the Project, including construction costs;

(g) Liabilities for personal injury, property damage, or tort arising out of the engineering, development, construction, commissioning of the Project Assets or the Project

(h) Liabilities for personal injury, property damage, or tort arising out of the operation, maintenance, repair, or use of the Project Assets or the Project on or prior to the Closing Date;

(i) Liabilities with respect to pending or threatened litigation, the Claim for which arises on or before the Closing Date in connection with the Project Company, Project Assets, or the Project (regardless of whether such Claim is asserted before or after the Closing Date); and

(j) Liabilities for Pre-Closing Taxes.

"Preliminary Performance Test Report" shall have the meaning set forth in 15.5(a).

"Prime Rate" means the rate per annum (rounded upwards to the nearest 1/100th of 1% per annum) equal to the rate of interest which JP Morgan Chase in New York, New York or its successor announces from time to time as its "prime lending rate" or equivalent rate or if such rate is not available, another rate published as the "prime rate" as agreed by Buyer and Developer, with each change in such rate to be effective on the day on which such change is effective.

"Pro-ratable Items" shall have the meaning set forth in 2.6(c).

"Procedures" shall have the meaning set forth in 18.1(b).

"Progress Report" shall have the meaning set forth in 11.6(a).

"Project" shall have the meaning set forth in the recitals of the Agreement.

"Project Assets" means all assets, properties, rights, and interests of every kind, nature, character and description (whether real, personal, or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site (as defined below)) and any goodwill related thereto, owned or leased by, or licensed to, or possessed by the Developer or, if applicable, the Project Company, as of the Closing Date (as defined below), in each case, which relate to or are used or held for use in connection with the development, construction, operation, maintenance, repair, ownership, or use of the Project, including the shared facilities, if applicable, including but not limited to: (a) studies, data, books, and records related to the Project (together with the real property agreements referenced in clause (b) below, the Project Contracts, the Project permits referenced in clause (g) and the Project reports referenced in clause (h) below, the "Books and Records"); (b) the Real Property (including any leasehold interest, licenses, rights of way or easements) on which any portion of the Project is located or which is used to access any portion of the Project and including any Project real property agreements (collectively, the "Project Site"); (c) the Project fixtures and equipment, including any buildings, fixtures and equipment on or associated with the Project Site; (d) all contracts, agreements or other arrangements to which Developer, Project Company (if applicable) or any of their affiliates is a party with respect to the Project, Project Site or any Project Asset (collectively the "Project Contracts"); (e) the Project improvements; (f) intellectual property necessary for the development, construction, operation, maintenance, repair, ownership or use of the Project; (g) the Project permits; (h) the Project reports; (i) meteorological data and any perfor; (j) all interconnection rights; (k) any warranties associated with the equipment and/or workmanship of the Project; and (l) any and all attributes of the Project (including all tax credits and other credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, associated with the Project or such attributes).

"Project Company" shall have the meaning set forth in the recitals of the Agreement.

"Project Company Consents" shall have the meaning set forth in 4.2(b).

"Project Company Contracts" means any Contract to which any Project Company is a party, or by the terms of which any Project Company is bound, or to which the Project or any Project Assets are subject, including any (a) Contract that is primarily or exclusively related to the development, permitting, acquisition, design, installation, ownership, marketing, sale, or planned operation of the Project or Project Company; (b) Contract between Developer and any of its Affiliates concerning the Project or the related Project Assets; (c) teaming agreement in connection with the development of the Project; (d) interconnection or transmission-related agreements or applications for

interconnection or transmission of or from the Project; (e) any agreement for the sale of power or environmental attributes of the Project, (f) the EPC Contract and Major Supply Agreements; (g) exclusivity agreements with any contractor, or other supplier or utility to which the Project Company is bound; (h) [contract providing for the borrowing of Indebtedness or the mortgaging, pledging or otherwise placing a Lien on any of the Project Assets,] or the guarantying of any obligation (other than endorsements made for collection) or otherwise material and related to any Indebtedness; (i) contract that provides for non-monetary obligations in connection with the Project or Project Assets, the non-performance of which obligations could reasonably be expected to have a Material Adverse Change; (j) lease, license, easement, or other real property interest necessary for the installation or operation of the Project, including any Real Property Contracts; (k) any agreement with or award from a Governmental Authority with respect to environmental, financial, or tax incentives; (l) any warranty agreement with respect to the procurement of Equipment for the Project; and (m) amendment or supplement to any of the foregoing.

"Project Company Permits" shall have the meaning set forth in 4.12(a).

"Project Company Regulatory Approvals" shall mean [__].[4]

"Project Problem" has the meaning set forth in 11.6(b)(i).

"Project Schedule" shall have the meaning set forth in 11.1.

"Proposed Purchase Price Allocation" shall have the meaning set forth in 17.3.

"Prudent Industry Practice" means any of the practices, methods, and acts relating to construction, interconnection, and electrical work engaged in or approved by a significant portion of the energy storage industry in the Pacific Northwest for energy storage facilities of a type and size and having geographical and climatic attributes similar to the Project which, including guidance from the Edison Electric Institute, OSHA Best Practices, and other generally accepted industry practices, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result in a cost-efficient manner consistent with good business practices and reliability criteria, safety considerations and expediency. Prudent Industry 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 acceptable industry practices, methods, or acts.

"Punch List Holdback Amount" means 200% of the value of any Punch List items outstanding as of Substantial Completion as valued and certified by the Buyer's Engineer as part of its Substantial Completion certification.

"Purchase Price" shall have the meaning set forth in 2.6(b).

"Qualified Operator" means a Person that directly or indirectly through its Affiliates has developed, owned, or operated for (or has hired another Person to develop and operate the Project that has for) at least [five (5) consecutive] years utility scale battery storage assets in the United States with an aggregate storage capacity of [____].

"Ramp Rate Guarantee" means the ramp rate guarantee set forth in Appendix O.

[4] Note to Bidders: Please provide a list, if any.

"Ramp Rate Test" means the test performed in accordance with the requirements of Appendix O, and Appendix A and related Design Documents to determine whether the Ramp Rate Guarantee has been achieved.

"Real Property" means all real property and interests in real property (including any leasehold interests, licenses, rights of way, or Easements, and including the rights and interests in the Real Property Contracts) to develop, construct, commission, own, and commence operations of the Project at the Site.

"Real Property Contracts" shall have the meaning set forth in 4.13(a).

"Real Property Estoppels" shall have the meaning set forth in 2.5(a)(viii).

"Regulated Materials" means any substance, material, or waste, including special waste, which is now or hereafter becomes listed, defined, or regulated in any manner as hazardous, extremely hazardous, corrosive, toxic, ignitable, explosive, radioactive, or flammable by any United States federal, state, or local Environmental Law and includes any oil, petroleum, petroleum products, polychlorinated biphenyls, asbestos in any form, and polyfluorinated and per fluorinated aromatic compounds.

"Release" means any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, or other movement of Regulated Material.

"Reliability Run Period" has the meaning set forth in Appendix O.

"Remediation" includes any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain, or otherwise remediate any Regulated Material, any actions to prevent, cure, or mitigate any Release of any Regulated Material, any action required to comply with any Environmental Laws or with any Permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation required under Environmental Laws and relating to any Regulated Material.

"Reports" means the Phase I ESA, as well as all other environmental impact studies, geotechnical reports, interconnection system impact studies, cultural assessments, hydrology reports, and wetland delineation reports, in each case, with respect to the Project and the Site.

"Required Change Order" shall have the meaning set forth in 12.2(c).

"Response Time Guarantee" means the response time guarantee set forth in Appendix O.

"Response Time Test" means the test performed in accordance with the requirements of Appendix O, and Appendix A and related Design Documents to determine whether the Response Time Guarantee has been achieved.

"Roundtrip Efficiency Guarantee" means the roundtrip efficiency guarantee set forth in Appendix O.

"Roundtrip Efficiency Test" means the test performed in accordance with the requirements of Appendix O, and Appendix A and related Design Documents to determine whether the Roundtrip Efficiency Guarantee has been achieved.

"Scope of Work" shall have the meaning set forth in Appendix A.

"Serial Defect" means a Defect occurring during the Warranty Period that includes [____]([_] %) or more of the same or substantially similar component(s) resulting from the same failure mode of the same manufacturer.

"Serial Defect Warranty Period" means a period of [_] years beginning on [_____].

"Significant Defect" means a single or recurring Defect which occurs at any time within the Warranty Period which results in the cessation of operation of the Project or will not, unless corrected, allow Buyer to operate the Project within parameters required to comply with applicable Law for a period of either three (3) consecutive days or an aggregate of five (5) days in the case of a recurring Defect.

"Site Acreage" means the total number of acres that comprise the Site.

"Straddle Period" means a taxable period that includes but does not end on the Closing Date.

"Subcontractor" means any Person (including vendors, suppliers, contractors, and consultants), other than Contractor, retained by Developer to perform a part of Developer's obligations under any Transaction Document, including the Major Subcontractors.

"Substantial Completion" means the Project has successfully completed commissioning to allow routine and normal operations and demonstrates that all of the Substantial Completion Criteria has been satisfied in accordance with the requirements of this Agreement.

"Substantial Completion Criteria" shall have the meaning set forth in Appendix P.

"Substantial Completion Date" means the date on the Certificate of Substantial Completion provided by Developer which is accepted in accordance with the requirements of 16.3. Developer shall ensure that the Project does not achieve Substantial Completion in any Calendar Quarter prior to the Calendar Quarter in which the Guaranteed Substantial Completion Date falls.

"Substantial Completion Delay Liquidated Damages" shall have the meaning set forth in 20.2(b).

"System" means the electric transmission sub-station and distribution facilities owned, operated, or maintained by Transmission Provider, which shall include, after construction and installation of the Project, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to complete the Project, all as set forth in the Interconnection Agreement.

"Tax" or "Taxes" means any and all federal, state, local, foreign, or other taxes, charges, fees, levies, tariffs, duties, liabilities, impositions, or other assessments in the nature of a tax (together with any and all interest, penalties, additions to tax, and additional amounts imposed relating or attributable to any failure to comply with any requirement regarding Tax Returns) imposed by any tax authority or other Governmental Authority, including income, gross receipts, profits, excise, real or personal property, environmental, sales, use, value-added, ad valorem, withholding, social security, retirement, rollback, employment, unemployment, customs duties, worker's compensation, occupation, escheat, unclaimed property, recapture, service, license, net worth, capital stock, payroll, franchise, gains, stamp, transfer and recording taxes, and shall include any liability for the Taxes of any other person or entity under Treasury Regulations Section 1.1502-6 (or similar provisions of state or local law), or as a transferee or successor, by indemnification, contract, or otherwise.

"Tax Benefit" means the [[__]% ITC], accelerated depreciation (including bonus depreciation), amortization and state level credits, deductions, and incentives.

"Tax Benefits Loss" means any denial, disallowance, loss, reduction, or recapture of, or any inability to claim, any Tax Benefits (including any Claim or Liability thereto) resulting from a breach by Developer of any of its representations, warranties, or covenants in this Agreement.

"Tax Returns" means any return, declaration, report, Claim for refund, or information return or statement relating to Taxes, in each case, including any such document prepared on a consolidated, combined, or unitary basis and also including any schedule or attachment thereto, filed or maintained, or required to be filed or maintained, in connection with the calculation, determination, assessment, or collection of any Tax and includes any amended returns required as a result of examination adjustments made by the Internal Revenue Service or other Governmental Authority.

"Technical Specification" means the specification for the Work set forth in Appendix A and Appendix P, and any modifications thereof made pursuant to the terms of this Agreement.

"Ten Percent Holdback" shall have the meaning set forth in 2.7(b).

"Tipping Basket Amount" shall have the meaning set forth in 22.1(c).

"Title Company" means [_____] or such other title insurance company reasonably acceptable to Buyer and Seller.

"Title Policy" means a title insurance policy issued by Title Company at Developer's expense (except as set forth herein) insuring Buyer's leasehold and fee simple rights, as applicable, in the Real Property, including the Easements as appurtenant easements, that (a) is in form and substance and contains such requirements, modifications, and endorsements as Buyer may reasonably approve, (b) contains such additional affirmative coverage and endorsements (at Buyer's cost and expense) as Buyer may reasonably request (provided, that Buyer shall bear the expense of any requested tax credit endorsements), (c) is in such amount as Buyer may negotiate with the Title Company, which shall in no event exceed the Purchase Price, (d) insures that Buyer is the sole holder of all insured leasehold and fee simple rights, as applicable, title and interests with respect to the Real Property, subject to such exceptions to title as Buyer may reasonably approve, (e) names Buyer and Project Company as the insured, (f) is issued on or before the Closing Date by the Title Company, (g) shows as exceptions only the Permitted Liens, and (h) does not contain the standard pre-printed exceptions that appear in the related title insurance commitment, which are able to be deleted with the delivery of affidavits and certifications signed or obtained by Developer and acceptable to the Title Company.

"Transaction" shall have the meaning set forth in 29.1(b).

"Transaction Documents" means once executed and in full force and effect, this Agreement, the Assignment and Assumption Agreement, and any other assignments, novation agreements, delegation agreements, conveyances, and other ancillary documents necessary to effect the transaction contemplated herein; provided, that the Project Company Contracts shall not be considered Transaction Documents hereunder.

"Transfer Tax" shall have the meaning set forth in 17.2.

"Transferred Warranties" means all those warranties offered or transferred by Developer to Buyer pursuant to ARTICLE 19.

"Transmission Provider" means Idaho Power Transmission.

"Treasury Regulations" means the United States Treasury Regulations promulgated under the Code.

"Unidentified Project Problem" shall have the meaning set forth in 11.6(c).

"Updating Information" shall have the meaning set forth in 7.4(a).

"Warranty" shall have the meaning set forth in 19.1(a).

"Warranty Period" shall have the meaning set forth in 19.2.

"Work" means the Equipment and Materials to be supplied and the entire works and services to be performed, or caused to be performed, by Developer under this Agreement, including all Equipment, Materials, and services in connection with the development, design, permitting, engineering, procurement, and construction of the Project, together with any modifications thereto in accordance with the terms hereof.

1.2 Interpretation.

(a) Unless the context requires otherwise, in this Agreement:

(i) Headings and the rendering of text in bold or italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement.

(ii) A reference to an Appendix, Exhibit, Schedule, Article, Section, or other provision shall, unless otherwise specified, be deemed to be a reference to appendices, exhibits, schedules, articles, sections, or other provisions of this Agreement, which appendices, exhibits, and schedules are incorporated herein by reference.

(iii) Any reference in this Agreement to another Contract or document shall be a reference to that other Contract or document as the same may be amended, modified, supplemented, or replaced from time to time.

(iv) Any reference in this Agreement to "this Agreement," "herein," "hereof," "hereunder," or "herewith" shall be a reference to this Agreement as a whole and not limited to the particular Appendix, Article, Section, Exhibit, Schedule, or provision in which the relevant reference appears and to this Agreement as amended, modified, supplemented, or replaced from time to time.

(v) References to any Party shall include any successors and assigns of the Party but, if applicable, only if such successors and assigns are permitted by this Agreement.

(vi) References to the term "includes" or "including" shall mean "includes, without limitation" or "including, without limitation."

(vii) Words importing the singular shall include the plural and vice versa and the masculine, feminine, and neuter genders shall include all genders.

(viii) The word "or" shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "or" rather than "either/or").

(ix) The terms "shall" and "will" are each mandatory, meaning must; and the term "may" is permissive.

(x) Relative to the determination of any period of time, "from" shall mean "including and after," "to" shall mean "to but excluding," and "through" shall mean "through and including."

(xi) If the time for performing an obligation under this Agreement occurs or expires on a day that is not a Business Day, the time for performance of such obligation shall be extended until the next succeeding Business Day.

(xii) References to Laws shall be references to the same as amended, modified, supplemented, or reenacted and in effect from time to time, and shall include references to all bylaws, instruments, orders, rules, and regulations for the time being made thereunder or deriving validity therefrom, unless the context otherwise requires.

(xiii) References to any amount of money shall mean a reference to the amount in United States dollars.

(xiv) Any reference in this Agreement to time of day refers to the prevailing Mountain Time.

(xv) Unless specifically stated to the contrary, all references to days, months and years in this Agreement refer to calendar days, months, and years, respectively.

ARTICLE 2
PURCHASE AND SALE OF MEMBERSHIP INTERESTS

2.1 IPUC Approval.

This Agreement is subject to, and the obligations of Buyer and Developer to purchase, sell and deliver Net Output, Green Tags and Capacity Rights hereunder shall only become fully effective upon the IPUC's approval of all terms and provisions hereof without change or condition, declaration that all payments to be made to Developer hereunder shall be allowed as prudently incurred expenses for ratemaking purposes, and approval of the accounting and regulatory treatment requested by Idaho Power in its application to the IPUC, all to the satisfaction of Buyer (the "IPUC Approval"). Buyer will agree to submit to the IPUC an application ("IPUC Submission") for necessary regulatory approvals of cost recovery through rates no later than sixty (60) days following the execution of the Agreement.

2.2 Sale and Transfer of Membership Interests.

On the terms and subject to the conditions set forth in this Agreement, Developer shall irrevocably and unconditionally sell, convey, transfer, deliver, and assign to Buyer, and Buyer shall purchase, receive, and accept from Developer, the Membership Interests, free and clear of all Liens and Liabilities, and the Parties shall take or cause to be taken the other actions described herein.

2.3 Firm Date.

(a) Following the Execution Date, each Party shall use commercially reasonable efforts to ensure the achievement of the "Firm Date," which shall be the first date on which all of the following conditions ("Firm Date Conditions") have been satisfied (or waived by the Party entitled to do so) and signifies completion of Project development and commencement of construction activities for the Project:

(i) **Buyer and Developer Firm Date Conditions.** The following conditions must be satisfied or otherwise waived in whole or in part by either Party in its sole discretion:

(A) The final form of the CCMA has been mutually agreed to by the Parties;

(ii) **Buyer Firm Date Conditions**. The following conditions must be satisfied or otherwise waived by Buyer in its sole discretion:

(A) An agreed upon list of Project permits to be specified in the Agreement as being required by the Firm Date (a) have been obtained and issued for the Project, (b) are in full force and effect, and (c) satisfy any requirements of the Agreement with respect to review and approval of permits;

(B) An agreed upon list of consents to be specified in the Agreement as required to be in place by the Firm Date have been duly obtained, made or given and are in full force and effect;

(C) Developer has delivered to Buyer the agreed upon list of reports to be specified in the Agreement as required and any additional reports or Design Documents required pursuant to the Agreement and such reports or Design Documents have satisfied any other requirements of the Agreement with respect to the preparation, sufficiency and material findings thereof;

(D) The Interconnection Agreement has been finalized and executed by the parties thereto in accordance with the requirements of the Agreement and is in form and substance acceptable to Buyer in its reasonable discretion;

(E) Developer has delivered to Buyer a Phase I ESA (and, if indicated in the Phase I ESA, a Phase II ESA) with respect to the Project Site, current and valid on the Firm Date under ASTM Standard Practice E1527-13, addressed to Buyer, and accompanied by a reliance letter incorporating user-provided information from Buyer in form and substance reasonably satisfactory to Buyer;

(F) Developer's representations and warranties are true, correct and complete as of the Firm Date in all material respects except for Developer's fundamental representations and warranties and representations and warranties qualified by a materiality standard, which will be true, correct and complete in all respects;

(G) Developer has performed its obligations in the Agreement to be performed prior to the Firm Date in all material respects;

(H) There is no Developer, Project Company (if applicable) or Project Material Adverse Change;

(I) Developer and Buyer have agreed on all Firm Date title objections and required exceptions and Developer has delivered all non-disturbance agreements and curative documents in accordance with the standards and processes set forth in the Agreement;

(J) The form of ALTA title policy to be issued as of the Closing Date has been finalized and agreed; and

(K) Developer has caused the relevant title company to issue a pro forma policy of title insurance consistent with the updated title commitment and the agreed upon Firm Date title objections and required exceptions.

(iii) **Developer Firm Date Conditions**. The following conditions must be satisfied or otherwise waived by Developer in its sole discretion:

(A) Buyer's representations and warranties are true, correct, and complete as of the Firm Date in all material respects except for Buyer's Fundamental Representations

and its representations and warranties that are qualified by a materiality standard, which will be true, correct, and complete in all respects.

(B) There is no Buyer Material Adverse Change.

(C) Buyer has performed its obligations under the Agreement in all material respects.

2.4 Full Notice to Proceed.

At or following satisfaction of the Firm Date Conditions, the Developer, or if applicable, the Project Company shall issue a Full Notice to Proceed with respect to the performance of the construction of the Project.

2.5 Closing Deliverables.

(a) Developer's Deliverables. At the Closing, Developer shall execute and deliver to Buyer the following documents and such other documents, bills of sale, assignments, and other instruments of transfer or assignment:

(i) a counterpart signature page to an assignment and assumption agreement with respect to the Membership Interests (the "Assignment and Assumption Agreement"), in form and substance set forth in Exhibit C, duly executed by an Authorized Signatory of Developer;

(ii) a duly completed and executed IRS Form W-9;

(iii) a certificate of a duly authorized officer of Developer certifying that: (A) attached thereto is a true, correct, and complete copy of a certificate of good standing with respect to Developer, issued by the Secretary of State of [___] as of a date not more than ten (10) days prior to the Closing Date; (B) attached thereto are true, accurate, and complete copies of the organizational documents of Developer, and all amendments thereto, as in effect at Closing; (C) attached thereto are copies of resolutions duly adopted by the Manager, authorizing the sale of the Membership Interests to Buyer and the execution, delivery, and performance by Developer of this Agreement and the transactions contemplated hereby and attesting that such resolutions are in full force and effect without amendment or modification at Closing; (D) attached thereto is the name, title, and signature of each of the Authorized Signatory authorized to execute and deliver this Agreement and the Transaction Documents, and any other document or instrument contemplated hereby or thereby, by or on behalf of Developer; and (E) the conditions specified in 2.9(a) and 2.9(b) have been satisfied;

(iv) a certificate of a duly authorized officer of Project Company certifying that: (A) attached thereto is a true, correct, and complete copy of a certificate of good standing with respect to Project Company, issued by the [_____] as of a date not more than ten (10) days prior to the Closing Date; (B) attached thereto are true, accurate, and complete copies of the organizational documents of Project Company, and all amendments thereto, as in effect at Closing; and (C) attached thereto is the name, title, and signature of each of the Authorized Signatories authorized to execute and deliver the Transaction Documents and any other document or instrument contemplated hereby or thereby, by and on behalf of Project Company;

(v) the Title Policy naming Project Company as the insured, together with a date down endorsement showing any new matters of record and an endorsement naming Buyer as an additional insured, such endorsements to be issued no earlier than five (5) Business Days before the Closing Date in form and substance reasonably acceptable to Buyer;

(vi) an ALTA/ACSM standard survey of the Real Property, dated no more than thirty (30) days before the date Full Notice to Proceed is issued, in accordance with minimum ALTA/ACSM standards then in effect and sufficient in form and substance to permit issuance of the Title Policy, prepared and certified as correct by a licensed land surveyor reasonably satisfactory to Buyer. Such survey shall show the location of the Site and all planned improvements based on the issued for construction civil engineering plans for the Project thereon, and the location of all easements and rights-of-way, whether above or underground, and shall show no encroachments of any improvements onto such easements or rights-of-way (except as permitted under the documents governing such easements and rights-of-way or pursuant to a consent, crossing agreement, or similar agreement) or onto property outside the boundaries of the Site as shown on the survey;

(vii) estoppels, in form and substance reasonably acceptable to Buyer, from each applicable counterparty to all Project Company Contracts that are not executed with a Governmental Authority (except the Real Property Contracts which are to be delivered in accordance with subsection (viii) below), including the EPC Contract and the Major Supply Agreements, dated no more than fifteen (15) days prior to the Closing, each of which shall include a statement that the respective Contract is in full force and effect (the "Estoppels");

(viii) estoppels, in form and substance reasonably acceptable to Buyer, from each applicable counterparty to the Real Property Contracts and dated no more than sixty (60) days prior to the Closing Date, each of which shall include a statement that the respective Real Property Contract is in full force and effect (the "Real Property Estoppels").

(ix) a Beginning of Construction Certificate substantially in the form of Exhibit D, duly executed by Developer and current as of the Closing Date.

(x) such releases of Liens and Liabilities and certificates as Buyer shall deem necessary or Buyer may reasonably request to affect the Closing contemplated by this Agreement, all of which shall be in form and substance reasonably satisfactory to Buyer.

(b) Buyer's Deliverables. At the Closing, Buyer shall execute and deliver to Developer the following documents and such other documents, deeds, bills of sale, assignments, and other instruments of transfer or assignment:

(i) a counterpart signature page to the Assignment and Assumption, duly executed by an Authorized Signatory of Buyer; and

(ii) a certificate of the Secretary or an Assistant Secretary of Buyer certifying that: (A) attached thereto is a true, correct, and complete copy of a certificate of good standing with respect to Buyer, issued by the Secretary of State of the State of Idaho as of a date not more than thirty (30) days prior to the Closing Date; (B) attached thereto are copies of resolutions duly adopted by Buyer's board of directors (or similar body), authorizing the purchase of the Membership Interests by Buyer and the execution, delivery, and performance by Buyer of this Agreement and the transactions contemplated hereby and attesting that such resolutions are in full force and effect without amendment or modification at Closing; (C) attached thereto is the name, title, and signature of each of the Authorized Signatories of Buyer authorized to execute and deliver this Agreement and the Transaction Documents, and any other document or instrument contemplated hereby or thereby; and (D) the conditions specified in 2.10(a) and 2.10(b) have been satisfied;

2.6 Purchase Price.

(a) Base Purchase Price. Subject to Section 2.6(b), the aggregate consideration payable by Buyer to Developer for (i) the Membership Interests and (ii) the Developer's obligations to deliver a Project that has achieved Final Completion shall be $[_____] (the "Base Purchase Price").

(b) Purchase Price Adjustments. The Base Purchase Price shall be adjusted as follows:

(i) decreased for the Guaranteed Capacity Liquidated Damages, if any;

(ii) decreased for Guaranteed Roundtrip Efficiency Liquidated Damages, if any;

(iii) decreased for Guaranteed Availability Liquidated Damages, if any;

(iv) increased or decreased, as applicable, for Buyer's or Developer's net pro-rata share of the Pro-Ratable Items;

(v) increased for the Buyer-Caused Delay Costs, if any; and

(vi) increased for the Buyer-Initiated Change Order Costs, if any.

(as so adjusted, the "Purchase Price").

(c) Pro-Ratable Items. The "Pro-Ratable Items" include each of those Project-related liabilities as set forth on Schedule 2.6(c).[5] Buyer's pro-rata share shall not exceed the amount set forth on Schedule 2.6(c).

(d) Buyer-Caused Delay Costs. The "Buyer-Caused Delay Costs" shall be equal the reasonable, documented actual costs incurred by Developer as a direct result of liabilities arising under the EPC Contract to the extent caused by a Change Order issued due to a circumstance set forth in 12.2(c)(ii)

(e) Buyer-Initiated Change Order Costs. The "Buyer-Initiated Change Order Costs" shall be equal to the reasonable documented actual costs incurred by Developer and approved by Buyer in accordance with 12.2(b) as a direct result of liabilities arising under the EPC Contract that are directly and solely caused by a Buyer-Initiated Change Order.

(f) Withholding. Notwithstanding any other provision in this Agreement to the contrary, Buyer and each of its Affiliates shall be entitled to deduct and withhold from amounts otherwise payable to any Person pursuant to this Agreement such amounts as it determines are required to be deducted and withheld with respect to the making of such payment under any provision of applicable Law. Such deducted or withheld amounts shall be treated for all purposes of this Agreement as having been paid to the relevant Person in respect of which such deduction and withholding was made. If Buyer determines that withholding of payments to a Person are required to be made pursuant to this 2.6(f), Buyer shall, as soon as reasonably practicable, notify such Person of such determination and, to the extent possible consistent with applicable Law, provide such Person with a reasonably opportunity to produce any required documentation to reduce or eliminate such withholding requirement.

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[5] Note to Bidders: Schedule 2.5(d) to provide for proration of (a) post-closing property taxes, (b) rents or property taxes due to increased valuation due to the installation of the Project that is applied pre-closing, to the extent applicable, and/or (c) specified prepayments under specified Project Contracts paid prior to Closing but relating to periods after Closing, such as completion or operation-based lease payments.

2.7 Closing and Payment Structure.

(a) Closing Date, Place and Time. The closing of the transactions contemplated by this ARTICLE 2 (the "Closing") shall take place at [_____] or such other location as the Parties shall agree, at 10:00 a.m. (Mountain Time) on the date that is three (3) Business Days from the date that all of the conditions precedent set forth in 2.9 and 2.1010 have been satisfied (or waived in writing by Buyer or Developer, as applicable), which date shall be on or before the Outside Closing Date, as such date may be extended in accordance with 20.2(a), or at such other time and date as the Parties shall mutually designate in writing (the "Closing Date"). The Closing shall be effective as of 12:01 a.m. (Mountain Time) on the Closing Date.

(b) Closing Payment. At the Closing, Buyer shall pay to Developer the ninety percent (90%) of the Base Purchase Price (the "Closing Payment") via wire transfer of immediately available federal funds to an account that is (i) located in the United States and (ii) designated by Developer at least ten (10) Business Days prior to the Closing Date.

(c) Substantial Completion Payment. Within ten (10) Business Days after the Buyer's Engineer certifies that the Project has achieved Substantial Completion, Buyer will pay to Developer the Purchase Price, less the Closing Payment, less the Punch List Holdback Amount.

(d) Payment of Punch List Holdback Amount. Within ten (10) Business Days after the Buyer's Engineer certifies that the Project has achieved Final Completion, Buyer will pay to Developer the Punch List Holdback Amount, provided that, after Substantial Completion but before Final Completion, Developer may submit invoices for partial release of the Punch List Holdback Amount prior to Final Completion for Punch List items completed to the extent such items completed aggregate to $[____] or more.

2.8 Further Assurances.

From time to time after the Closing Date, Developer shall, at the request of Buyer but without further consideration, promptly execute and deliver to Buyer such other agreements, certificates and further instruments of sale, assignment, transfer, and conveyance and take such other and further actions as Buyer may reasonably request in order to vest or perfect in Buyer or its assigns, and put Buyer or its assigns in possession of, the Membership Interests, the Project Assets, and the Project Company Contracts and to carry out and implement the Closing and the transactions contemplated in this ARTICLE 2, including any regulatory requirements of Buyer.

2.9 Conditions Precedent to Buyer's Obligation to Complete the Closing.

The obligation of Buyer to effect the Closing and the transactions contemplated in this ARTICLE 2 is subject to the satisfaction or waiver by Buyer on or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties made by Developer in this Agreement that are qualified with respect to materiality shall be true and accurate in all respects, the representations and warranties made by Developer in this Agreement that are not so qualified shall be true and accurate in all material respects, and the Fundamental Representations and warranties shall be true and correct in all respects, on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date).

(b) Performance. Developer and the Project Company, as the case may be, shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Deliveries. Developer shall have executed and Made Available or caused to be executed and Made Available to Buyer the items set forth in 2.5(a) and any other final reports and Design Documents required to be delivered on or prior to the Closing Date.

(d) Absence of Orders; Law. No preliminary or permanent injunction or other Judgment of any Governmental Authority to prevent the consummation of the transactions contemplated by this Agreement, including the Closing, shall be in effect or pending, and no applicable Law shall have been enacted by any Governmental Authority that makes consummation of such transactions illegal.

(e) Transaction Documents and Credit Support. All of the Transaction Documents (together with all amendments, supplements, schedules, and exhibits thereto) and the Credit Support provided by Developer, shall be in full force and effect, and shall be in form and substance substantially similar to the form attached hereto or otherwise satisfactory to Buyer in its discretion.

(f) Project Company Permits. All of the Project Company Permits necessary for the development, construction, ownership, operation, maintenance, repair, and use of the Project shall have been duly issued and obtained and shall be in full force and effect and shall be in form and substance satisfactory to Buyer in its reasonable discretion.

(g) Project Company Consents. All of the Project Company Consents shall have been duly obtained, made or given, shall be in full force and effect, and shall be in form and substance satisfactory to Buyer in its reasonable discretion.

(h) Project Company Reports. All of the Reports shall be in form and substance satisfactory to Buyer in its reasonable discretion.

(i) Material Adverse Change. No Developer Material Adverse Change shall have occurred and be continuing.

(j) Substantial Completion. Developer shall have achieved Substantial Completion, as certified by the Independent Engineer, and Developer shall have Made Available to Buyer the unabridged and unredacted final report concerning the energy storage potential of the Project prepared by the Independent Engineer.

(k) [reserved]

(l) Beginning of Construction Certificate. Buyer shall have received a Beginning of Construction Certificate substantially in the form of Exhibit D, and current as of the Closing Date, duly executed by Developer and current as of the Closing Date.

(m) Project Company Contracts. The Project Company Contracts, including the EPC Contract and the Major Supply Agreements, shall be in full force and effect, in form and substance required by this Agreement, without any modifications, amendments, or change orders thereto, other than such modifications, amendments, or change orders that have been approved by Buyer in writing and no party to the Project Company Contracts shall be in breach. The Independent Engineer shall have certificated that the Project Contracts and schedules support achievement of applicable milestones.

(n) Regulatory Approvals. All of the Project Company Regulatory Approvals shall have been duly obtained, made, or given, shall be in full force and effect, and shall be in form and substance satisfactory to Buyer in its reasonable discretion.

(o) Conformity with Standards. Developer has certified to Buyer that to Developer's Knowledge, the Project conforms to applicable engineering and installation standards set forth herein, including the technical specifications and Applicable Laws, and the Developer has no knowledge of any defects in workmanship or equipment caused by the Contractor or Subcontractors with respect to the Project.

(p) Title Matters. Any objections to the Title Policy and survey matters have been cured to Buyer's reasonable satisfaction.

(q) Tax Benefit. Developer has provided documentation satisfactory to Buyer with respect to qualification for any applicable tax credits or other benefits (or, in each case, payments or deemed refunds in lieu thereof), for the Project including under [specify applicable sections of the Code based on the applicability of any relevant tax credits].

(r) Credit Support. Developer's or, if applicable, Project Company's credit support is in full force and effect.

2.10 Conditions Precedent to Developer's Obligation to Complete the Closing.

The obligation of Developer to effect the Closing and the transactions contemplated in this ARTICLE 2 is subject to the satisfaction or waiver by Developer on or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties made by Buyer in this Agreement that are qualified with respect to materiality shall be true and accurate in all respects, the representations and warranties made by Buyer in this Agreement that are not so qualified shall be true and accurate in all material respects, and the Fundamental Representations and warranties shall be true and accurate in all respects, on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date).

(b) Performance. Buyer shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Deliveries. The Closing Payment has been paid and Buyer shall have executed and Made Available or caused to be executed and Made Available to Developer the items set forth in 2.5(b).

(d) Absence of Orders; Law. No preliminary or permanent injunction or other Judgment of any Governmental Authority to prevent the consummation of the transactions contemplated by this Agreement, including the Closing, shall be in effect or pending, and no applicable Law shall have been enacted by any Governmental Authority that makes consummation of such transactions illegal.

(e) Transaction Documents. All of the Transaction Documents (together with all amendments, supplements, schedules, and exhibits thereto) shall be in full force and effect, and shall be in form and substance substantially similar to the form attached hereto or otherwise satisfactory to Developer in its reasonable discretion.

(f) Buyer Consents. All of the Buyer Consents shall have been duly obtained, made or given, shall be in full force and effect, and shall be in form and substance satisfactory to Developer in its reasonable discretion.

(g) Buyer Regulatory Approvals. Buyer shall have received final non-appealable regulatory approval providing for satisfactory cost recovery assurance and any necessary regulatory accounting authorization from the IPUC, All of the Buyer's other regulatory approvals shall have been duly obtained, made, or given, shall be in full force and effect, and shall be in form and substance satisfactory to Buyer in its discretion.

(h) Material Adverse Change. No Buyer Material Adverse Change shall have occurred and be continuing.

2.11 Early Termination.

(a) Notwithstanding anything contained in this Agreement to the contrary, in addition to the termination rights of the Parties set forth in Article 26, this Agreement may be terminated at any time prior to the Closing Date as follows:

(i) by the mutual written agreement of the Parties;

(ii) Prior to Closing, by either Party, if any Law shall become effective after the Execution Date or a Governmental Authority shall have issued a final and non-appealable order, injunction, Judgment, decree, or ruling, in each case, restraining, enjoining, or otherwise prohibiting or making illegal the Closing or the transactions contemplated in connection therewith;

(iii) Prior to Closing, by either Party, as applicable: (a) if the other Party breaches any representation, warranty, or covenant in the Agreement, and (i) such breach would result in a failure of, or inability of the other Party to satisfy the applicable closing conditions, and (ii) such breach has not been cured to Buyer's or Developer's, as applicable, reasonable satisfaction within thirty (30) days following receipt of written notice of such breach or an extended cure period not to exceed the Outside Closing Date; or (b) a disclosure schedule update is delivered by a Party in accordance with 7.4, which discloses a matter or matters resulting in Developer Material Adverse Effects or Buyer Material Adverse Effects, as applicable, and which has not been cured within thirty (30) days following receipt of written notice of such breach or an extended cure period not to exceed the Outside Closing Date;

(iv) By either Party, upon the bankruptcy of the other Party;

(v) By either Party, if the Closing has not occurred by [___][6] (the "Outside Closing Date," subject to any extension granted pursuant to 20.2(a)); provided, further, that the right to terminate this Agreement pursuant hereto shall not be available to any Party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Outside Closing Date;

(vi) By either Party, if a Force Majeure event or delay event causes a delay in development or construction of the Project that will last longer than the Outside Closing Date;

(vii) Prior to IPUC Approval: by Buyer, if a Material Adverse Change occurs (including as a result of a disclosure schedule update is delivered by a Party in accordance with 7.4) with respect to Developer; and by Developer, if a Buyer Material Adverse Change occurs (including

[6] Note: Project development timeline to be discussed.

as a result of a disclosure schedule update is delivered by a Party in accordance with 7.4) with respect to Buyer;

(viii) by either party, if the Firm Date has not occurred by [___][7] (the "Firm Date Deadline"); provided, however, that the right to terminate this Agreement pursuant hereto shall not be available to Developer, if Developer is in breach of this Agreement and such breach has been the cause of, or resulted in, the failure of the Project to achieve the Firm Date on or before the Firm Date Deadline;

(ix) by Buyer, if a Change in Law regarding taxes increases Buyer's costs to own and operate the Project in a dollar amount in excess of $[__];

(x) by Buyer, if the EPC Contract and the Major Supply Agreements have not been agreed to by the Project Company and applicable contractors in form and substance on terms equal to or better than those attached hereto as Exhibit G and Exhibit H, within sixty [60] days of execution of the Agreement;

(xi) by Buyer, if the EPC Contract and the Major Supply Agreements have not been executed by the Project Company and applicable contractors on terms equal to or better than those attached hereto as Exhibit G and Exhibit H, within one hundred eighty (180) days of the execution of the Agreement;

(xii) by Buyer, if this Agreement has not been approved by the Board of Directors of Buyer or Buyer has not received all required internal approvals, including formal approvals by its executive management, prior to the date that is thirty (30) days after execution of this Agreement;

(xiii) By Buyer, if (a) IPUC Approval is not obtained by six (6) months following Buyer's submission of the Agreement to the IPUC and (b) after good faith efforts of the Parties to consult with each other for a period of thirty (30) days, they are not able to agree that the Project will achieve the Guaranteed Substantial Completion Date, notwithstanding the delay, or if the Parties agree that the Project will not timely achieve the Guaranteed Substantial Completion Date, then the Agreement may be terminate by Buyer;

(xiv) By either Party, if (a) IPUC Approval is not obtained by twelve (12) months following Buyer's submission of the Agreement to the IPUC or (b) Buyer's other regulatory approvals in form and substance satisfactory to Buyer in its discretion are not obtained on or prior to [___];

(xv) by Buyer, if the Closing has not occurred by [___][8] (which date, for the avoidance of doubt, is not subject to extensions); provided, further, that the right to terminate this Agreement pursuant hereto shall not be available if Buyer's material breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;

(b) Either Party desiring to terminate this Agreement pursuant to 2.11(a) shall give written notice thereof to the other Party.

(c) If validly terminated, then all further obligations of the Parties will end (other than those specified herein this Agreement that are intended to survive termination), with respect to a termination due to a breach as set forth in clause 2.11(a)(iii) or 2.11(a)(iv), the terminating Party will be entitled to pursue all rights or remedies available at law or in equity; provided, however, that liability for such a pre-closing termination shall be capped at [$ ___ million]. If validly terminated by

[7] Note: Project development timeline to be discussed.
[8] Note: Project development timeline to be discussed.

either Party pursuant to 2.11(a)(i), 2.11(a)(ii), 2.11(a)(v), 2.11(a)(vi), 2.11(a)(vii), 2.11(a)(viii), 2.11(a)(x), or 2.11(a)(xiv) then neither Party shall have any liability to the other with respect to such termination.

(d) If this Agreement is terminated by Buyer pursuant to 2.11(a)(viii), 2.11(a)(xi), 2.11(a)(xii), 2.11(a)(xv) then Developer shall be liable to Buyer for an early termination fee in the amount of [____], all further obligations of the Parties under this Agreement (other than the provisions which by their terms are intended to survive the expiration or termination of this Agreement) shall be terminated (with no fees or damages payable by Buyer).

(e) The Parties agree that, to the extent that liquidated damages are provided for in this 2.11, it is because actual damages as a result of termination of this Agreement pursuant to the applicable section would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the above liquidated damages are in the nature of liquidated damages and are a reasonable and appropriate measure of the damages that Buyer or Developer, as applicable, would incur as a result of such delays or failures, and do not represent a penalty.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Developer hereby represents and warrants to Buyer that all of the statements contained in this ARTICLE 3 are true and correct: (a) as of the Execution Date, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties are true and correct as of such date); (b) as of the Firm Date; and (c) as of the Closing Date.

3.1 Organization, Standing, and Power.

Developer is duly formed, validly existing and in good standing, under the applicable Laws of the jurisdiction of its formation. Developer has the requisite limited liability company power and authority to own, operate, and lease its properties and assets and to carry on its business as now being conducted and as proposed to be conducted pursuant hereto. Developer is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business now being transacted by it or proposed to be transacted by it pursuant hereto makes qualification necessary, including the State of Idaho.

3.2 Authority; Execution and Delivery.

Developer has full limited liability company power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder, and to complete the transactions contemplated hereby and thereby. The execution and delivery by Developer of this Agreement and the Transaction Documents to which it is a party, and the performance by Developer of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary limited liability company action.

3.3 Binding Agreement.

This Agreement and the Transaction Documents to which Developer is a party have been duly executed and delivered by Developer and, assuming due and valid authorization, execution and delivery thereof by Buyer and each other party thereto, this Agreement and the Transaction Documents to which it is a party are valid and binding obligations of Developer enforceable against

Developer in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar applicable Laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity.

3.4 No Conflicts.

The execution and delivery by Developer of this Agreement and the Transaction Documents to which Developer is a party does not, and the performance by Developer of its obligations hereunder and thereunder and the completion of the transactions contemplated hereby and thereby, shall not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of Developer's organizational documents;

(b) assuming all of the consents and approvals set forth on Schedule 3.4(b) (the "Developer Consents") have been obtained or given, result in a breach, default or violation (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any Contract associated with the Project to which Developer or any Affiliate of Developer (other than Project Company) is a party or Permit associated with the Project obtained by Developer or any Affiliate of Developer (other than Project Company) (with or without notice or lapse of time or both), except for such breaches, defaults, or violations (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained in writing (true and correct copies of which have previously been furnished to Buyer);[9]

(c) assuming all of the Developer Consents have been obtained or given, conflict with or result in a violation or breach in any term or provision of any applicable Law applicable to Developer or the Project; or

(d) assuming all of the Developer Consents have been obtained or given, result in the imposition or creation of any Lien of any nature on the Membership Interests or Project, other than Permitted Liens or Permitted Equity Exceptions.

3.5 No Proceedings.

Except as set forth on Schedule 3.5, there are no actions, suits, investigations, or proceedings by or before any Governmental Authority or arbitrator or, to Developer's Knowledge, threatened against or affecting Developer, which would reasonably be expected to impact the transactions contemplated herein.

3.6 Compliance with Laws.

Developer is, and at all times has been, and to Developer's Knowledge, Contractor and each Subcontractor is, and at all times has been compliance with all applicable Laws, including those relating to occupational health and safety, data privacy, and anti-corruption and anti-bribery, and the Project Company Permits with respect to the Project, including the design, engineering, supply, construction, installation, testing, commissioning, operation, and ownership of the Project.

3.7 Membership Interests.

The Membership Interests held by Developer represent one hundred percent (100%) of the ownership interests in the Project Company. Developer has good title to and is the lawful, legal,

[9] Note to Bidders: Parties to discuss whether any Developer Consents will be relevant to the development and construction of the Facility.

record, and beneficial owner of the Membership Interests and Buyer, at the Closing, will receive good title to the Membership Interests, free and clear of all Liens. Other than with respect to Permitted Equity Exceptions, there is no subscription, option, warrant, purchase right, call, or commitment of any character relating to or entitling any Person to purchase or otherwise acquire the Membership Interests. Other than with respect to Permitted Equity Exceptions, there is no outstanding security, instrument, or obligation that is or may be convertible into or exercisable or exchangeable for any Membership Interest or other ownership interest in the Project Company. Other than with respect to Permitted Equity Exceptions, there are no contracts under which the Project Company may become obligated to sell or otherwise issue any ownership interests in the Project Company. The Membership Interests are an "uncertificated security" within the meaning of such term under ARTICLE 8 of the Delaware Uniform Commercial Code. Developer has owned the Membership Interests of Project Company continuously since the date of Project Company's formation, and the Membership Interests have been duly authorized, validly issued, fully paid, and non-assessable, in each case to the extent applicable.

3.8 Financial Resources.

Developer has the financial resources, assets, operating capital, credit, and other resources and means necessary to fulfill, on a timely basis, all of (a) Developer's obligations under this Agreement and the other Transaction Documents to which Developer is or will be a party and (b) Developer's and Project Company's obligations under the EPC Contract and Major Supply Agreements.

3.9 Reports.

(a) Developer has Made Available to Buyer a true, accurate, and complete copy of each Firm Date Report on or before the Firm Date.

(b) Prior to the Closing Date, Developer has Made Available to Buyer (a) all updates and supplements to the Firm Date Reports and (b) true, accurate, and complete copies of any additional Reports received by Developer or the Project Company prior to the Closing Date.

(c) To Developer's Knowledge, there has been no material change in any findings or conclusions of any Report delivered or Made Available by Developer to Buyer other than for which Developer has Made Available and redelivered such Report to Buyer in final form as revised to address any such change.

3.10 Due Diligence.

Developer has Made Available for Buyer's review all material information in its possession or control or in the possession or control of its Affiliates relating to the Project Company and the Project requested by Buyer in connection with Buyer's due diligence examination conducted with respect to the transactions contemplated by this Agreement. To Developer's Knowledge, none of the information provided by Developer or its Affiliates to Buyer contains any untrue or incorrect statement of fact, or omits to state any fact necessary to make the information, in light of the circumstances in which it was provided, not misleading.

3.11 No Material Adverse Change.

No Material Adverse Change has occurred and is continuing and, to Developer's Knowledge, no event, result, occurrent, development, fact, change, or effect of whatever natures or kind exists that would reasonably be expected to result in a Material Adverse Change.

3.12 Affiliate Transactions.

Except as set forth on Schedule 3.12, (a) neither Developer nor any of its Affiliates nor any manager, officer, employee, director, member, or stockholder of Developer or any of its Affiliates is a party to any contract, agreement, instrument, or transaction with the Project Company; and (b) none of such Persons has any beneficial or contractual interest in or will derive any financial gain from any property or assets, real or personal, tangible or intangible, used in or pertaining to the Membership Interests or the Project, except for prior to the Closing, the normal rights of a stockholder or member.

3.13 Brokers.

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

3.14 Absence of Certain Business Practices.

Neither Developer nor Project Company, nor any of their respective directors, officers, employees or agents, or any other Person acting on their behalf, directly or indirectly, have to Developer's Knowledge, given or agreed to give any gift or similar benefit to any customer, supplier, governmental employee, or any other person that would violate Corrupt Practices Laws, or could reasonably be expected to subject Project Company to any material damage or penalty in any civil, criminal, or governmental litigation or proceeding under Corrupt Practices Laws. Developer further represents and warrants that (a) no unrecorded fund or asset of Project Company has been established for any purpose, (b) no accumulation or use of corporate funds of Project Company has been made without being properly accounted for in the books and records of Project Company, and (c) no payment has been made by or on behalf of Project Company with the understanding that any part of such payment is to be used for any purpose other than that described in the documents supporting such payment. Neither Developer nor Project Company, nor any current director, officer, employee or, to Developer's Knowledge, any agent or other Person acting on behalf of Project Company, have made, accepted, or received any unlawful contribution, payment, gift, kickback, expenditure, or other item of value in violation of Corrupt Practices Laws.

3.15 Solvency.

No petition or notice has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up, or dissolution of Developer. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Developer's assets or the income of Developer. Developer does not have any plan or intention of, or has received any notice that any other Person has any plan or intention of, filing, making, or obtaining any such petition, notice, order, or resolution or of seeking the appointment of a receiver, trustee, custodian, or similar fiduciary.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF DEVELOPER WITH RESPECT TO THE PROJECT COMPANY AND THE FACILITY[10]

Developer hereby represents and warrants to Buyer that all of the statements contained in this ARTICLE 4 are true and correct: (a) as of the Execution Date, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties are true and correct as of such date); (b) as of the Firm Date; and (c) as of the Closing Date.

4.1 Organization, Standing, and Power.

The Project Company is a limited liability company, duly organized, validly existing, and in good standing under the Laws of Delaware. Project Company is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the Real Property owned or held under lease by it or the nature of the business now being transacted by it or proposed to be transacted by it pursuant hereto makes qualification necessary, including the State of Idaho. True, correct, and complete copies of the charter documents of the Project Company, all in such form as currently in effect, have been Made Available to Buyer. The only business activity that has been carried on or is currently carried on by the Project Company is the development, construction, operation, and ownership of the Project.

4.2 No Conflicts.

The execution and delivery by Developer of this Agreement and the Transaction Documents to which Developer is a party does not, and the performance by Developer of its obligations hereunder and thereunder and the completion of the transactions contemplated hereby and thereby, shall not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of Project Company's organizational documents;

(b) assuming all of the consents and approvals set forth on Schedule 4.2(b) (the "Project Company Consents") have been obtained or given, result in a breach, default, or violation (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions, or provisions of any Contract to which Project Company is a party (or by which the Assets of the Project Company may be bound) or Permit obtained by Project Company (with or without notice or lapse of time or both), except for such breaches, defaults, or violations (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained in writing (true and correct copies of which have previously been furnished to Buyer);

(c) assuming all of the Project Company Consents have been obtained or given, conflict with or result in a violation or breach in any term or provision of any applicable Law applicable to the Project Company or the Project; or

(d) assuming all of the Project Company Consents have been obtained or given, result in the imposition or creation of any Lien of any nature on the Project, other than Permitted Liens.

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[10] Note to Bidders: All project representations and warranties are subject to IPC's ongoing due diligence review of the project. Parties to discuss process for updating the disclosure schedules before the Closing.

4.3 No Proceedings.

Except as set forth in Schedule 4.3(a), there have been no actions, suits, or legal or arbitration proceedings pending to which the Project Company is or was a party or pertaining to any Project Assets or the Membership Interests, and neither Developer nor the Project Company nor any of their respective Affiliates has received written or oral notice of any threatened actions, suits or legal or arbitration proceedings against or affecting the Project Assets, the Membership Interests, or the Project Company, nor have any of their respective directors, managers, members, or officers received written or oral notice of any such threatened proceedings, in any such case at law or in equity before any Governmental Authority or arbitral body against or affecting the Project Company, the Project Assets or the Project. The Project Company does not owe any indemnity pursuant to a claim for indemnity that has been made against the Project Company by any counterparty to any Project Company Contract. Developer has Made Available all notices of force majeure or any similar notices with respect to any Project Company Contract, as set forth in Schedule 4.3(b).

4.4 Compliance with Laws.

(a) Project Company is, and at all times has been, in compliance with all applicable Laws, including those relating to occupational health and safety, and the Project Company Permits with respect to the Project. Neither the Developer nor the Project Company has received any written notice or claim that the Developer or the Project Company has violated any applicable Law relating to the Project Company or the Project Assets.

(b) The Project is being, and at all times has been, developed, constructed, and permitted in compliance with all applicable Laws, all Project Company Permits, and Prudent Industry Practices. As constructed, the Project shall conform to and comply with all zoning, environmental, wildlife, land use, and other applicable Laws and the requirements of all Project Company Permits.

4.5 No Prior Business.

Since the date of its formation, Project Company has not conducted any business or acquired any property or asset, except in each case in connection with the development and construction of the Project. Project Company does not own any interest in any other Person. Project Company has good and valid title to its assets and properties, free and clear of all Liens (other than Permitted Liens).

4.6 Employees.

The Project Company does not have, nor has it ever had any employees. The Project Company does not have, nor has it ever, maintained or participated in any Benefit Plan.

4.7 Subsidiaries and Joint Ventures.

The Project Company does not own, nor has it ever owned, any capital stock, security, membership, or partnership interest or other equity interest of any kind in any corporation, partnership, limited liability company, joint venture, association, or other entity.

4.8 Managers and Bank Accounts.

The Project Company does not have any managers, officers, or directors. The Project Company does not have any bank accounts.

4.9 No Undisclosed Liabilities.

Except as otherwise disclosed in Schedule 4.9 and Made Available to Buyer, the Project Company does not have any Liabilities of any nature (whether secured or unsecured, accrued, absolute or contingent, unliquidated, or otherwise and whether due or to become due) including book entry between Affiliates or any other method or means except for Liabilities for future performance arising in the ordinary course under the Project Company Contracts and Project Company Permits listed in the Schedule 4.9 (none of which is a Liability for breach of contract, breach of warranty or tort). Except as set forth in Schedule 4.9, all invoices or other demands for payment received prior to Closing by the Project Company or by Developer or its Affiliates with respect to any existing Project Company Contracts have been paid in full, and the Project Company does not otherwise have any obligations to make any payment as of the Closing Date. Upon the Closing, the Project Company has no Indebtedness, except for Permitted Indebtedness.

4.10 Project Assets.

As of the Execution Date and the Firm Date, Schedule 4.10 contains a true, correct, and complete list of all Project Assets. As of the Closing Date, Schedule 4.10 contains a true, correct, and complete list of all Project Assets that are not the Project or the subcomponents thereof. Other than as set forth on Schedule 4.10, the Project Company has good and valid title (or leasehold title, as applicable) to each of its Project Assets, free and clear of Liens (other than Permitted Liens), and will continue to have such title notwithstanding the Closing hereunder.

4.11 Project Company Contracts.[11]

(a) Schedule 4.11 contains a true, correct, and complete list of all Project Company Contracts (other than any real property agreements, which are listed on Schedule 4.13(a)), (b) true, correct, and complete copies of all such Project Company Contracts have been Made Available to Buyer, and (c) neither the Project Company nor any Affiliate thereof that is a party to any such Project Company Contract is in default (and, to Developer's Knowledge, no other party thereto is in default) of any material obligation under any such Project Company Contract, and, to Developer's Knowledge, no conditions exist that, with the passage of time or the giving of notice, would be reasonably expected to constitute a default of any material obligation under any such Project Company Contract. Each Project Company Contract constitutes the legal, valid, binding, fully effective, and enforceable obligation of the Project Company and any Affiliate thereof that is a party to any such Project Company Contract and, to Developer's Knowledge, any other party thereto except as may be limited by applicable bankruptcy and similar laws affecting the enforcement of creditors' rights and general equitable principles. All of the representations and warranties made under each Project Company Contract by the Project Company or any Affiliate thereof that is a party to any such Project Company Contract were true and correct when made. Neither the Project Company nor any Affiliate thereof has received any written notice from any counterparty to any Project Company Contract that such Person is considering the amendment, termination, revocation, or cancellation of any of such Project Company Contract. Neither is the Project Company a party to, nor is the Project or the Project Assets bound by or subject to, any Contract other than a Project Company Contract.

4.12 Project Company Permits; Project Company Regulatory Approvals.[12]

(a) Schedule 4.12(a) sets forth all Permits (other than Deferred Permits) required by applicable Law in connection with the development, engineering, procurement, construction,

[11] Note to Bidders: Please confirm that all contracts will be with the Project Company and not the Developer.
[12] Note to Bidders: Please confirm that all permits will be in the name of the Project Company.

commissioning, ownership, and commencement of operation of the Project (the "Project Company Permits"). Developer has Made Available to Buyer all Project Company Permits.

(b) Schedule 4.12(b) sets forth all Deferred Permits required by applicable Law in connection with the development, engineering, procurement, construction, commissioning, ownership, operation, and maintenance of the Project in accordance with this Agreement and the other Transaction Documents as of the date that the Project achieves Final Completion. Developer has Made Available to Buyer all Deferred Permits that it has obtained as of the Closing Date and as of the date the Project achieves Final Completion. For the avoidance of doubt, once the Project Company obtains a Deferred Permit, Developer shall revise Schedules 4.12(a) and 4.12(b) accordingly.

(c) All Project Company Permits that are required by applicable Law on or prior to the date this representation is made or deemed made pursuant to this Agreement listed on Schedule 4.12(a) have been obtained in the name of the Project Company, are in full force and effect, are final (and all public comment and/or appeal periods under applicable Law have expired or terminated) and satisfy all requirements of this Agreement with respect to review and approval thereof. To Developer's Knowledge, no event has occurred and is continuing that reasonably would be anticipated to permit, or after notice or lapse of time or both reasonably would be anticipated to permit, any materially adverse modification, revocation, or termination of, or any other material change in, any Project Company Permit. Except as set forth in Schedule 4.12(c), there is no action, suit, investigation, or proceeding with respect to the Project Company, any Project Assets, or the Project, nor, to Developer's Knowledge, threatened, that reasonably would be anticipated to result in any material adverse modification, or the rescission, termination, or suspension of any Project Company Permit.

(d) To Developer's Knowledge, no facts or circumstances concerning the Project, the Project Assets, or the Project Company exist that would reasonably be expected to hinder, impair, restrict, limit, or disqualify Project Company or the Project from obtaining any Deferred Permit or any ministerial Permit in the ordinary course prior to the time it is required to be obtained hereunder, under the other Transaction Documents, the EPC Contract, and, in any event, prior to the time required by applicable Law. There does not exist any condition that, with notice, passage of time, or both, would reasonably be expected to cause the Project Company to not be able to acquire the Deferred Permits and any necessary ministerial Permits in the ordinary course, on reasonable terms, and in a reasonable period of time

4.13 Real Estate.[13]

(a) Schedule 4.13(a) sets forth all "Real Property Contracts" that grant the Project Company real property rights required for the Project, including the design, engineering, supply, construction, installation, testing, commissioning, operation, and ownership of the Project. Neither Developer nor any of its Affiliates (other than Project Company) owns or leases any real property associated with the Project Company, the Site, or the Project. Except as set forth in Schedule 4.13(a), the Project Company does not own or lease any Real Property. The Real Property Contracts are in full force and effect, and the applicable landlords have not given Developer, the Project Company, or any of its Affiliates any notice of breach, default, or termination of any of the Real Property Contracts. There exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Real Property Contracts by the Developer, the Project Company or, to Developer's Knowledge, the applicable landlord. The rent,

[13] Note to Bidders: Please confirm that all site control will be in the name of the Project Company. Please confirm that no real property is currently owned by the Project Company. For the parcels that will be purchased, please describe the process and timing for purchase.

fees, and other sums due and payable under the Real Property Contracts have been paid through the Closing Date. There exists no lease superior to the Real Property Contracts, and there is no mortgage, deed of trust, or security interest which may disturb or encumber the Real Property Contracts, as long as there is no tenant default under the Real Property Contracts. To Developer's Knowledge, other than uses reserved to landlord in the Real Property Contracts and rights holders identified in the Title Policy, no other Person has the right to occupy the Real Property. As of the Closing Date, the Project Company will have good and Af to the Real Property Contracts, and such Real Property Contracts are free and clear of all Liens other than Permitted Liens. Without limiting the generality of the foregoing, as of the Closing Date, any oral farming leases pertaining to any part of the Site have been properly and legally terminated in accordance with Idaho Law.

(b) Schedule 4.13(b) sets forth all easements (other than those easements included in Real Property Contracts) required for the installation and maintenance of overhead or underground transmission for the Project, collection or communication lines and facilities for the Project, and other appliances and fixtures for use in connection with such lines and facilities ("Easements"). The Easements are in full force and effect, and the applicable landowners under the Easements have not given Developer, Project Company, or any of its Affiliates any notice of breach, default, or termination of any of the Easements. There exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Easements by the Developer, the Project Company, or the applicable landowner. Any amounts due and payable under the Easements have been paid through the Closing Date. There is no mortgage, deed of trust, or security interest which may disturb or encumber the Easements, as long as there is not default by grantee under the Easements. As of the Closing Date, the Project Company will have good and marketable title to the Easements, and such Easements are free and clear of all Liens other than Permitted Liens.

(c) Developer has delivered and Made Available to Buyer true, correct, and complete copies of (i) the Real Property Contracts, (ii) the Easements, and (iii) the most recent leasehold title insurance commitments or proforma title policy (together with exceptions thereto), as applicable, and survey with respect to the Real Property and the Site that are in the possession of Developer and Project Company.

(d) Developer has Made Available and delivered to Buyer true, correct, and complete copies of all Contracts providing for the sale, lease, transfer, or other disposition, including any option Contracts, on, for, or with respect to the Real Property or the Site.

(e) Except as set forth on Schedule 4.13(e), there are no pending zoning or other land use or Permit-related proceedings (including condemnation or eminent domain proceedings) and there is no contemplated or threatened zoning or other land use or Permit-related proceedings (including condemnation or eminent domain proceedings) affecting the Real Property or the Site or any part thereof, or any sale or other disposition of the Real Property or the Site or any part thereof in lieu of condemnation.

(f) To Developer's Knowledge, except for assessments occurring on a regular basis in accordance with applicable Law, there is no pending or contemplated reassessment of any parcel included in the Site that is reasonably expected to increase the real estate Tax assessment for such parcels.

(g) Developer has not violated, and to Developer's Knowledge there is no violation of, any applicable Law relating to or affecting the Real Property or the Site.

(h) The Real Property, including the Site and any setbacks and associated borders, within the fence line does not exceed an area of [__] acres. The aggregate costs and expenses under the Real Property and Easements for the total Real Property, including developed and undeveloped land, does not exceed an average of $[__]/acre/year (subject to an escalation equal to the greater of (i) 2% per year on a compounded basis or (ii) by the percentage change, if any, in the CPI for the preceding available four quarters), for a minimum of [25] years after Substantial Completion.

4.14 Environmental Matters.

(a) Schedule 4.14(a) sets forth all environmental reports, assessments, and audits, including reports, assessments, and audits relating to wetlands, air quality, and air pollutant emissions or discharges, and studies relating to threatened or endangered species and avian species, including those species protected by Environmental Law, and studies relating to archaeological, cultural, and historical resources prepared by or on behalf of Project Company[14] in connection with the Project or otherwise in Developer's possession or control with respect to the Project. Developer has Made Available and provided Buyer with copies of the materials set forth in Schedule 4.14(a).

(b) (i) as of the Closing Date, Project Company holds and is in compliance with all Project Company Permits, including all applicable environmental Permits; (ii) the Project has been constructed, and the Work has been performed, in compliance with all Environmental Laws; (iii) neither Developer nor Project Company has received any written notice of a pending or threatened Claim, or inquiry by any Governmental Authority or other Person relating to any actual or alleged violations of Environmental Laws or any actual or potential obligation on the part of Developer or Project Company to investigate or take any corrective action relative to any Regulated Material or threatened Release of any Regulated Material, in each case, related to the Project; (iv) neither Developer nor Project Company has entered into or agreed in writing to any final decree or order with any Governmental Authority and neither Developer nor Project Company is subject to any Judgment relating to compliance of the Project with any Environmental Law or to the investigation or cleanup of Regulated Materials at the Project; (v) to Developer's Knowledge and except as set forth in the Environmental Report, no Person has generated, transported, treated, stored, disposed of, arranged to be disposed of, Released or threatened to Release any Regulated Materials at, on, from, or under the Site in violation of, or as would reasonably be expected to result in liability under, any Environmental Laws; (vi) except as set forth in the Permits and Project Company Contracts, neither Developer nor Project Company has assumed any contractual liabilities or obligations arising under any Environmental Law in connection with the Project; and (vii) neither Developer nor Project has utilized any underground storage tanks or Equipment using polychlorinated biphenyls, Emerging Contaminants, or asbestos in violation of Environmental Law at the Site. For the avoidance of doubt, compliance with Environmental Laws includes performance of all studies required or recommended under Environmental Law to assess the impacts of the Project on the environment, wildlife, or cultural resources and the development and implementation of best management practices and mitigation measures to reduce or avoid impacts to environmental, wildlife, or cultural resources, including, as applicable, any species conservation strategy or conservation agreement and any cultural resources treatment plan

(c) Except as set forth in Schedule 4.14(c), no Environmental Law requires Developer or Project Company to obtain the consent of a Governmental Authority to any transaction contemplated by this Agreement or any Transaction Document, including (i) any requirement to modify or to transfer any Project Company Permit, (ii) any requirement to file any notice or other submission with any Governmental Authority, (iii) the placement of any notice, acknowledgment or covenant in any

[14] Note to Bidders: Please confirm that all environmental studies and reports will be for the benefit of the Project Company.

land records, or (iv) the modification of or provision of notice under any Contract, consent order, or consent decree. No Lien has been placed upon any Real Property under any Environmental Law.

4.15 Sufficiency of Assets.

(a) Developer has, or will have at the Closing, the power and right to sell, convey, deliver, transfer, and assign to Buyer, the Membership Interests and, thereby, the Project Assets free and clear of all Liens, other than Permitted Liens on the Project Assets.

(b) Other than the Transaction Documents, the Project Assets, the Project Company Permits, the Project Company Contracts, the Real Property Contracts, the Easements, the EPC Contract, the Major Supply Agreements, the Reports, the Transferred Warranties, the Equipment, and the Materials, there are no other material assets or rights of any kind, whether tangible or intangible, real or personal, owned or held by Developer or the Project Company or any of its Affiliates relating to, associated with, or concerning the Project.

(c) As of the Firm Date, the Transaction Documents, the Project Assets, the Project Company Permits, the Project Company Contracts, the Real Property Contracts, the Easements, the EPC Contract, the Major Supply Agreements, and the Reports constitute all of the material Contracts, Permits, assets, and properties necessary to develop, permit, design, engineer, supply, procure, construct, install, test, commission, own, and commence operation of the Project in accordance with applicable Law, Prudent Industry Practice, the Project Company Permits, and the Transaction Documents.

(d) As of the Closing Date, the Transaction Documents, the Project Assets, the Project Company Permits, the Project Company Contracts, the Real Property Contracts, the Easements, the EPC Contract, the Major Supply Agreements, the Reports, the Transferred Warranties, the Equipment, and the Materials, constitute all of the material Contracts, Permits, assets, and properties necessary to develop, permit, design, engineer, supply, procure, construct, install, test, commission, use, own, and commence operations of the Project in accordance with applicable Law, Prudent Industry Practice, the Project Company Permits, and the Transaction Documents.

4.16 Construction of the Project; Expertise.

(a) There exist no facts or circumstances that reasonably could be expected to hinder, delay, restrict, or prevent: (i) the ability of the Project to be developed, permitted, designed, engineered, supplied, constructed, installed, tested, and commissioned in all material respects in accordance with the terms and conditions of the Transaction Documents, applicable Laws, the Project Company Permits, and Prudent Industry Practice; (ii) the Project from achieving Mechanical Completion on or before the Outside Closing Date; or (iii) the Project from achieving Final Completion in accordance with the Project Schedule.

(b) The Project Assets constituting the Project to be transferred, conveyed, assigned, or otherwise acquired and delivered to Buyer pursuant to this Agreement or any other Project Company Contract, include all of the assets used, held by, or necessary or convenient for the ownership and operation of the Project, and collectively will provide to Buyer an operational Project at the Site in accordance with all Project Company Permits, applicable Law, and Prudent Industry Practice, and no Person other than Developer, Project Company, or Buyer owns or has any rights in or to the Project.

(c) The development, permitting, design, engineering, supply, procurement, construction, installation, testing, commissioning, ownership, use, operation, and maintenance of the

Project in accordance with this and the other Transaction Documents is in compliance with all Project Company Permits, applicable Law, and Prudent Industry Practice.

(d) Each of the Developer and Contractor have substantial experience and expertise in the development, design, engineering, construction, and management of turnkey construction of renewable energy facilities such as the Project and the capability to carry out the Work in accordance with terms and conditions of this Agreement and the other Transaction Documents, and acknowledges that Buyer is relying on such experience, expertise, and capability in entering into this Agreement.

4.17 Tax Benefits.

(a) To Developer's Knowledge, no facts or circumstances concerning the Project or the Project Company exist that would reasonably be expected to hinder, impair, restrict, limit, preclude, or disqualify the Project or the Project Assets from qualifying for, and producing and giving rise to, the Tax Benefits.

(b) The Project Company is the owner of the Project Assets and the Project for tax purposes, and neither the Project Assets, the Project nor any property that is part of the Project has been placed in service for federal income tax purposes (including Sections 48 and 168 of the Code). Neither the Project nor any property that is part of the has been energized or synchronized to the electric transmission system. Critical preoperational testing with respect to the Project has not been completed. Daily operations at the Project have not commenced.

(c) There has been no "original use" (within the meaning of Section 48 or Section 168(k) of the Code) of the Project Assets, the Project, or any property that is part of the Project. No property that is a part of the Project Assets or the Project has been used by any Person other than in the development, construction, or startup of the Project.

(d) Neither Developer nor any Developer Affiliate has claimed or intends to claim any depreciation deductions, amortization deductions, tax credits (including the ITC), or other credits, deductions, or allowances with respect to the Project or any property that is part of the Project or the Project Assets.

(e) No property in the Project or the Project Assets is "dual use equipment" within the meaning of Treasury Regulations Section 1.48-9(d)(6).

(f) No portion of the basis of the property in the Project is attributable to "qualified rehabilitation expenditures" within the meaning of Section 47(c)(2)(A) of the Code.

(g) No portion of any property that is part of the Project or the Project Assets has benefited from the proceeds of any grant or rebate program that would cause a reduction in the amount of the ITC with respect to the Project or the Project Assets, and no application with respect to any such grant or rebate has been filed or submitted. No portion of the Site is currently enrolled in the U.S. Department of Agriculture's Conservation Reserve Program.

(h) No property that is part of the Project or the Project Assets is or has been (i) "tax-exempt bond financed property" or "tax-exempt use property" within the meaning of Section 168 of the Code, (ii) imported property of the kind described in Section 168(g)(6) of the Code, or (iii) property used by a Person described in Section 50(b)(3) of the Code.

(i) The Project is located entirely within the United States.

(j) [Construction of the Project began before [____] and after [____] within the meaning of Sections 48(a)(2)(A)(i)(II), 48(a)(3)(A)(i) and 48(a)(6) of the Code and the IRS Notice.] The certifications set forth in the Beginning of Construction Certificate are true, correct, and complete in all respects.

(k) The transactions contemplated by this Agreement will not have an adverse effect on the continuing validity and effectiveness of any Tax exemption, Tax holiday, other Tax abatement, or incentives for which the Project is currently eligible.

(l) The Site has not been subject to a preferential or special property tax assessment, value limitation, or other favored Tax treatment. The Site is not, has not been, and will not be (as a result of the Closing and the transactions contemplated hereby) subject to rollback Taxes.

(m) All Tax Benefits attributable to, resulting from or arising in connection with the Project shall belong to Buyer. Neither Developer nor Project Company has any legal obligation, absolute or contingent, to any Person other than Buyer to transfer or effect a transfer of all or any portion of the Project, including any electric power or Tax Benefits attributable to, resulting from, or arising in connection with the Project.

4.18 Taxes.

(a) The Project Company is and has at all times been classified as an entity disregarded as separate from Developer for U.S. federal tax purposes (and state and local tax purposes, as applicable), and no election has been filed by or with respect to the Project Company to treat the Project Company as an association taxable as a corporation for U.S. federal tax purposes.

(b) All Tax Returns that are required to be filed by or with respect to the Project Company, the Project Assets, the Work, or the Project have been duly and timely filed in accordance with all applicable Laws, all such Tax Returns are true, correct, and complete in all aspects and have been prepared in substantial compliance with all applicable Laws, and all Taxes due and payable by or with respect to the Project Company, the Project Assets, the Work, or the Project have been duly and timely paid in full (whether or not shown as due on such Tax Returns).

(c) All Taxes that are required to be withheld or collected by or with respect to the Project Company, the Project Assets, the Work, or the Project have been duly and timely withheld and collected and have been duly and timely paid, remitted, or deposited to or with the appropriate Governmental Authority.

(d) There are no Liens for Taxes (other than statutory Liens for Taxes that are not yet due and payable) upon any assets of the Project Company, the Project Assets, the Work, or the Project, nor are any such Liens pending or threatened.

(e) The Project Company (i) has no liability for the Taxes of any other Person (A) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign law) or (B) as a transferee or successor, and (ii) is not and has not been a party to, and does not have has any liability under, any Tax sharing, Tax allocation, Tax indemnity, Tax reimbursement, or similar agreement or arrangement, other than any agreement or arrangement entered into in the ordinary course of business the primary purchase of which is not Tax sharing, allocation, indemnity, or reimbursement.

(f) Neither the Project Company nor Buyer or any of its Affiliates (as a result of Buyer being a direct or indirect owner of the Project Company after the Closing) is required to include any item of income in, or exclude any item of deduction from, taxable income for any Tax period (or

portion thereof) ending after the Closing as a result of any (i) change in method of accounting for any taxable period (or portion thereof) ending on or before the Closing Date, (ii) use of an improper method of accounting for a Tax period ending on or prior to the Closing, (iii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Law) executed on or prior to the Closing, (iv) installment sale or open transaction disposition made on or prior to the Closing, (v) prepaid amount received on or prior to the Closing, or (vi) election under Section 108(i) of the Code (or any corresponding or similar provision of state, local, or foreign Tax Law) made prior to the Closing.

(g) The Project Company has not engaged in any "reportable transaction" as defined in Treasury Regulations Section 1.6011-4(b)(2) (or any transaction requiring disclosure under a corresponding or similar provision of state, local, or foreign Tax law).

(h) No Claim has been made by a Governmental Authority in a jurisdiction where Tax Returns of a particular type are not filed by or with respect to the Project Company, the Project Assets, the Work, or the Project that the Project Company, the Project Assets, the Work, or the Project is or may be subject to such type of taxation by that jurisdiction.

(i) The Project Company is in compliance with all state unclaimed property and escheat Laws and has timely and accurately filed all required unclaimed property or escheat reports or Tax Returns.

(j) There is no audit, action, claim, assessment, examination, levy, deficiency, adjustment, or other judicial or administrative proceeding pending, threatened, or to Developer's Knowledge, proposed or contemplated with respect to any Tax imposed on or with respect to the Project Company, the Project Assets, the Work or the Project.

(k) There are no agreements, consents, or waivers extending the statutory period of limitation applicable to the collection or assessment of any Taxes imposed on or with respect to the Project Company, the Project Assets, the Work, or the Project and no Governmental Authority has requested any such agreement, consent, or waiver. The Project Company is not the beneficiary of any extension of time within which to file any Tax Return.

(l) No power of attorney is currently in effect, and no private letter ruling, technical advice memorandum, closing agreement, or similar item has been requested or obtained from any Governmental Authority with respect to the Project Company, the Project Assets, the Work, or the Project, including any application for a ruling, advice, agreement, or similar item that has been withdrawn.

(m) Developer is not a "foreign person" within the meaning of Section 1445 of the Code.

4.19 FERC.

The Project Company is not subject to, or is exempt from, regulation as a "holding company" under the Public Utility Holding Company Act of 2005 and FERC's regulations and orders issued thereunder. The Project Company is not a "public utility" under Section 201(e) of the Federal Power Act and FERC's regulations and orders issued thereunder. The Project Company is not subject to financial, organizational, or rate regulation as a "public utility," "electric utility," or similar designation under any Law.

4.20 Insurance.

Schedule 4.20 contains (a) copies of certificates of insurance for all current insurance policies that insure the Project Company, the Project Assets and the Project until the date of the Closing, and (b) a true, complete, and correct list of all Claims made under such insurance policies since the formation of the Project Company. All such insurance policies are in full force and effect, neither Developer nor the Project Company has defaulted in any material respect (or is in material breach of such insurance policies, including any such breach or default with respect to the payment of premiums or the giving of notice of Claims), with respect to its obligations under any such insurance policies or have been denied insurance coverage thereunder, and no written notice of cancellation or termination has been received by Developer or the Project Company respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation.

4.21 Books and Records.

True and correct copies of the Project Company's Books and Records have been Made Available to Buyer, including such Books and Records that may be maintained by Developer.

4.22 Intellectual Property.

Except as set forth in Schedule 4.22, Project Company does not own any copyright, intellectual property right, patent, patent application, domain name, trade secret, trademark, trademark application, service mark, service mark application, assumed name, or trade name. Neither Project Company nor, with respect to the Project, Developer have interfered with, infringed upon, misappropriated, or violated any intellectual property rights of third parties in any respect, and neither Project Company nor, with respect to the Project, Developer have received any charge or complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation.

4.23 No Data Breaches.

There has been no security breach, cyberattack, other data security or cyber incident or unauthorized access to any Developer IT Asset, which resulted in the unauthorized use, misappropriation, modification, encryption, corruption, disclosure, or transfer of any material information or data contained therein relating to the Project Company or the Project Assets that would reasonably be expected to result in a Material Adverse Change.

4.24 No Other Representations.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, NEITHER DEVELOPER, THE PROJECT COMPANY, NOR ANY AFFILIATE OR REPRESENTATIVE OF DEVELOPER MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE MEMBERSHIP INTERESTS, THE PROJECT COMPANY, THE FACILITY, THE PROJECT ASSETS, OR THE BUSINESS, ASSETS, OPERATIONS, CONDITION (FINANCIAL OR OTHERWISE) OR PROSPECTS OF THE PROJECT COMPANY, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Developer that the statements contained in this ARTICLE 5 are true and correct: (a) as of the Execution Date, except to the extent such representations and warranties are specifically made as of a particular date (in which case such

representations and warranties are true and correct as of such date); (b) as of the Firm Date; and (c) as of the Closing Date.

5.1 Organization, Standing, and Power.

Buyer is duly formed, validly existing, and in good standing under the applicable Laws of the jurisdiction of its formation. Buyer has the requisite corporate power and authority to own, operate, and lease its properties and assets and to carry on its business as now being conducted and as proposed to be conducted pursuant hereto. Buyer is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business now being transacted by it or proposed to be transacted by it where qualification or license is necessary.

5.2 Authority; Execution and Delivery.

Buyer has full corporate power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder, and to complete the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Transaction Documents to which it is a party, and the performance of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary corporate action.

5.3 Binding Agreement.

This Agreement and the Transaction Documents to which Buyer is a party have been duly executed and delivered by Buyer and, assuming due and valid authorization, execution and delivery thereof by Developer and each other party thereto, this Agreement and the Transaction Documents to which it is a party are valid and binding obligations of Buyer enforceable against Buyer in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar applicable Laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity.

5.4 No Conflicts.

Buyer's execution and delivery of this Agreement and the Transaction Documents to which it is a party does not, and the performance by Buyer of its obligations hereunder and thereunder, and the completion of the transactions contemplated hereby and thereby, shall not:

(a) conflict with or result in a violation or breach of any of the terms, conditions, or provisions of Buyer's organizational documents;

(b) assuming all of the consents and approvals set forth on Schedule 5.4(b) (the "Buyer Consents") have been obtained or given, result in a breach, default, or violation (or give rise to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any material Contract or Permit (with or without notice or lapse of time or both) with respect to which Buyer is a party or by which Buyer or its assets may be bound, except for such breaches, defaults, or violations (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained in writing (true and correct copies of which have previously been furnished to Developer) or which would not reasonably be expected to result in a Material Adverse Change; or

(c) assuming all of the Buyer Consents have been obtained or given, conflict with or result in a violation or breach in any term or provision of any applicable Law applicable to Buyer.

5.5 No Proceedings.

Except as set forth on Schedule 5.5, there are no actions, suits, investigations, or proceedings by or before any Governmental Authority or arbitrator pending against Buyer or, to Buyer's Knowledge, threatened against Buyer, which would reasonably be expected to result in a Buyer Material Adverse Change.

5.6 Buyer Permits; Buyer Regulatory Approvals.

(a) Schedule 5.6(a) sets forth all Permits required with respect to the design, engineering, development, construction, startup, testing, commissioning, and completion of the Project that are the responsibility of Buyer to obtain (the "Buyer Permits").

(b) Except for IPUC Approval and as set forth on Schedule 5.6(b), no consent or approval of, filing with, or notice to, any Governmental Authority by Buyer is required in connection with the execution, delivery, and performance by Buyer of this Agreement or any of the Transaction Documents to which it is a party or the completion of the transactions contemplated hereby or thereby.

5.7 Brokers.

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

5.8 Solvency.

No petition or notice has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up, or dissolution of Buyer. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Buyer's assets or the income of Buyer. Buyer does not have any plan or intention of, or has received any notice that any other Person has any plan or intention of, filing, making, or obtaining any such petition, notice, order, or resolution or of seeking the appointment of a receiver, trustee, custodian, or similar fiduciary.

5.9 Sufficiency of Funds.

Upon satisfaction of the conditions precedent set forth in 2.9, Buyer will have sufficient cash on hand or other sources of, or access to, immediately available funds to enable it to pay the Purchase Price in accordance with 2.7(b).

ARTICLE 6
CREDIT SUPPORT

6.1 Credit Support.

(a) Within five (5) Business Days of Buyer's submission of the executed Agreement to the IPUC in accordance with 2.1 and thereafter until the Firm Date, Developer shall be obligated to furnish Credit Support to Buyer, in the aggregate amount of $[____] (the "Initial Credit Support").

(b) Within five (5) Business Days of the Firm Date until Final Completion, Developer shall be obligated to furnish Credit Support to Buyer in the aggregate amount of $[___] (the "Construction Period Credit Support").[15]

(c) Within five (5) Business Days of Final Completion until the first (1st) anniversary of Final Completion, Developer shall be obligated to furnish Credit Support to Buyer in the aggregate amount of $[___] (the "Post-Construction Period Credit Support").[16]

(d) Within five (5) Business Days of the first anniversary of Final Completion and continuing until the fifth (5th) anniversary of Final Completion, Developer shall be obligated to furnish Credit Support to Buyer in the aggregate amount of $[___] (the "Operating Period Credit Support").

6.2 Utilization of Credit Support.

Buyer shall be entitled to draw upon and/or be paid from any Credit Support provided by the Developer for any obligation of Developer arising under this Agreement and the Transaction Documents that is not paid when due (subject to any applicable cure periods).

6.3 Release of Credit Support.

The Initial Credit Support shall be returned to Developer within fifteen (15) Business Days after Developer furnishes the Construction Period Credit Support in accordance with 6.1(b). The Construction Period Credit Support shall be returned to Developer within fifteen (15) Business Days after Developer furnishes the Post-Construction Period Credit Support in accordance with 6.1(c). The Post Construction Period Credit Support shall be returned to Developer or released within fifteen (15) Business Days after Developer furnishes the Operating Period Credit Support in accordance with 6.1(d). The Operating Period Credit Support shall be returned to Developer within fifteen (15) Business Days after the fifth (5th) anniversary of Final Completion. Notwithstanding anything herein to the contrary, upon the expiration or earlier termination of this Agreement, the Credit Support required under 6.1 shall remain in place in an amount equal to the aggregate value of the Claims by Buyer under this Agreement made in good faith and then pending, if any, but no more than the aggregate amount required under 6.1, which Credit Support provided under 6.1 shall only then be released once such pending Claims are resolved and any monies due in connection therewith have been paid to Buyer.

6.4 Contractor Credit Support.

Developer shall cause the EPC Contract to require the Contractor to post Credit Support or obtain a guaranty from a creditworthy parent company, in the aggregate amount of the EPC Contract Price. The amount of any such Credit Support may be reduced dollar-for-dollar with any EPC Contract Price sums paid to Contractor. If Contractor's Credit Support is furnished by way of a parent guaranty or a letter of credit, such guaranty, or letter of credit shall name Buyer as an additional beneficiary.

[15] Construction Period Credit Support up to 10% of Purchase Price
[16] Post-Construction Period Credit Support up to 20% of Purchase Price

ARTICLE 7
COVENANTS OF THE PARTIES

7.1 General Covenants of the Parties.

(a) Each Party shall each (a) as promptly as is reasonably practicable, diligently and in good faith use commercially reasonable efforts to cause each Firm Date condition and Closing condition in this Agreement to be satisfied as soon as reasonably possible, and (b) coordinate and cooperate with the other Party in providing such information and supplying such assistance as may be reasonably requested by such other Party up to the Final Completion of the Project. Without limiting the generality of the foregoing or any other provision of this Agreement regarding approvals, the Developer and Buyer shall each individually use commercially reasonable efforts to obtain all authorizations, consents, orders, and approvals of, and to give all notices to and make all filings with, all Governmental Authorities (including those pertaining to the Permits and Regulatory Approvals) and third parties up to Final Completion of the Project that may be or become necessary for the performance of its obligations under this Agreement and shall cooperate fully with the other Party in promptly seeking to obtain all such authorizations, consents, orders, and approvals, giving such notices, and making such filings; provided, however, that Developer shall be primarily responsible for seeking and obtaining such approvals, consents, and orders and preparing and submitting such notices and filings (other than Buyer's obligation to submit this Agreement for IPUC Approval).

(b) Each Party shall use commercially reasonable efforts to do and perform or cause to be done and performed all further acts and things and shall execute and deliver all further agreements, certificates, instruments, and documents as any other Party may reasonably request in order to effect the agreements set forth in the Transaction Documents and the consummation of the transactions contemplated herein. Developer shall promptly provide Buyer with all materials and documentation reasonably requested by Buyer for its due diligence review of the Membership Interests and the Project. Developer shall promptly and diligently cooperate with Buyer in such due diligence process, including responding within a commercially reasonable period to all reasonable inquiries.

7.2 Developer Covenants.

(a) Prior to the Closing Date, Developer shall take the following actions:

(i) Design the Project so as to achieve the Performance Guarantees, each as confirmed by the Performance Guarantee Tests, respectively;

(ii) Obtain and maintain, or cause to be obtained or maintained, insurance on the Project and Project Site effective as of the start of construction in accordance with Appendix L-1;

(iii) Deliver true, correct, and complete copies of draft and final Project reports, studies and Design Documents required to be delivered pursuant to this Agreement with respect to the Project;

(iv) Ensure all Project Assets are legally and beneficially owned and titled in the name of the Project Company prior to Closing;

(v) Ensure Buyer and the Buyer's Engineer and their respective representatives have a right to a representative with a full-time presence at the Project Site and a right to reasonably access and inspect the Project Site, the Project Assets, and the Books and Records;

(vi) deliver to Buyer (i) one or more commitments for title insurance for the Project Site, and (ii) a current preliminary ALTA survey. Buyer may provide to Developer a title objection letter that identifies Firm Date title objections and required exceptions; and

(vii) conduct its business and, if applicable, that of the Project Company in the ordinary course (subject to certain approval rights of Buyer pursuant to the terms of this Agreement), protecting Buyer's and, if applicable, the Project Company's interests against material changes, but affording Developer and, if applicable, Project Company the flexibility to continue necessary development of the Project.

(b) Prior to the Closing Date, Developer shall cause the Project Company to conduct its business in the ordinary course of business, consistent with past practice; provided that Developer shall not, and shall cause the Project Company and its Affiliates not to, take any of the following actions without the prior written consent of Buyer;

(i) except as required by this Agreement, modify in any material respect, amend, or terminate any Project Company Contract (including, but not limited to the EPC Contract, the Major Supply Agreements, and the Interconnection Agreement) or Real Property Contract; provided however, that such actions will only be deemed "material" if the adverse impact to Buyer (or after the Closing, the Project Company or the Project), individually or in the aggregate, is greater than $[_____];

(ii) enter into an engineering procurement and construction agreement or major supply agreement that does not conform (in all material respects) to the requirements of this Agreement, including the forms of such agreements attached hereto as Exhibits I and Exhibit H.

(iii) other than the EPC Contract, the Major Supply Agreements, and the Interconnection Agreement, enter into any material Project Company Contract or Real Property Contract; provided however, that such actions will only be deemed "material" if the adverse impact to Buyer (or after the Closing, the Project Company, or the Project), individually or in the aggregate, is greater than $[_____];

(iv) send any notices declaring an event of force majeure or the default of any counterparty to a Project Company Contract, or any notice that could reasonably be expected to have a Material Adverse Change, under any Project Company Contract without first notifying Buyer;

(v) initiate or threaten to initiate any litigation or adversarial proceeding that would reasonably be expected to impact the Project Company, the Site, the Project Assets, or the Project;

(vi) release, waive, settle, or compromise any dispute or pay damages under any settlement or compromise of any proceeding relating to the Project, the Project Company, or the applicable Project Assets;

(vii) sell, lease, license, assign, transfer, or encumber (including transfers to Developer or any of its Affiliates) any Project Assets to any Person;

(viii) make any material change in the book or accounting methods used by or applicable to the Project Company or Project, except as required by GAAP;

(ix) merge or consolidate with any other Person or adopt any plan of dissolution or liquidation, or make any voluntary bankruptcy or insolvency filing (or consent to any such involuntary filing) or reorganization;

(x) loan, gift, sell, convey, or transfer in any manner any applicable Project Assets to Developer or any other Person, other than as contemplated under this Agreement;

(xi) incur or assume Indebtedness (excluding any Indebtedness outstanding as of the Execution Date), other than the Permitted Indebtedness;

(xii) admit any new member, manager, or holder of membership interests or other Membership Interests;

(xiii) redeem or repurchase, directly or indirectly, any Membership Interest of the Project Company or declare, set aside or pay any dividends or make any other distributions (whether in cash or in kind) with respect to any Membership Interests;

(xiv) issue, sell, or transfer any notes, bonds, other debt securities, or any membership interest (including the Membership Interests) of the Project Company;

(xv) acquire (by merger, consolidation, or acquisition of stock or assets or otherwise) any corporation, partnership, or other business organization or division thereof or collection of assets constituting all or substantially all of a business or business unit;

(xvi) make, revoke, or change any Tax election, change any Tax accounting methods, policies, or practices, file any amended Tax Return or claim for refund, enter into any closing agreement, settle, or otherwise compromise any Tax claim or assessment relating to the Project Company, the Project Assets or the Project, file any request for rulings or special Tax incentives with any Governmental Agency, surrender any right to claim a refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Project Company, the Project Assets or the Project, enter into any Tax allocation, sharing, reimbursement, or indemnity agreement, or take any other similar action;

(xvii) incur, create, or assume any Lien other than Permitted Liens created in the ordinary course of business;

(xviii) enter into any transaction or contract with Developer or any of its Affiliates (except as contemplated by this Agreement);

(xix) change or authorize any change in the organizational documents of the Project Company;

(xx) amend or materially modify the organizational documents of Developer in a manner that would have a material adverse effect on the ability of Developer to consummate the transactions contemplated by this Agreement

(xxi) take any action that would result in any additional Governmental Authority having jurisdiction over the Project Company or the Project, except as contemplated 4.12, 4.16(d), and 5.6; or

(xxii) amend, modify, terminate, or fail to renew any insurance policy listed on Schedule 4.20, or cause any such policy to no longer be in full force and effect, fail to pay premiums owed with respect to any such policy and provide a notice of cancellation or termination of any such policy;

(xxiii) materially and adversely amend or modify, fail to maintain or obtain, or terminate any Permit;

(xxiv) hire any employees or establish, adopt, amend, or commence participation in, or incur any liability under, any Benefit Plan in respect of Project Company;

(xxv) solicit third parties to acquire the Project or the Project Company;

(xxvi) take any action or fail to take any action that would reasonably be expected to materially adversely affect the Project or the Project Assets;

(xxvii) Make or change any material tax election related to the Project or, if applicable, the Project Company, and

(xxviii) commit or agree to do any of the foregoing.

(c) Notwithstanding anything herein to the contrary, Developer is responsible for all EPC Contract, Major Supply Agreement, and other Project Contract payments, milestone payments, and any other obligations under the arising thereunder, whether incurred or payable prior to, on, or after the Closing Date. Developer is responsible for all costs associated with EPC Change Orders whether submitted or approved prior to or after Closing; provided, however, that certain Required Change Orders may allow for an adjustment to the Purchase Price in accordance with 2.6(b). For the avoidance of doubt, Buyer shall not be responsible for any costs associated with EPC Change Orders, whether they arise or are payable before, on, or after the Closing Date.

(d) Within three (3) Business Days of receipt, Developer shall provide to Buyer a copy of any feasibility studies, systems studies, and/or facilities studies that contain an estimate or a final determination of Interconnection Costs. Developer is responsible for all Interconnection Costs incurred or payable on or prior to Closing. To the extent that any refund of any portion of the Interconnection Costs shall be received by the Developer or otherwise due from the Transmission Provider, the full amount of such refund shall be paid to the Buyer. If any additional Interconnection Costs are assessed by Transmission Provider against the Project Company after Closing, Buyer shall be responsible for such additional Interconnection Costs.

7.3 Buyer Covenants

Buyer will submit the executed Agreement for IPUC Approval in accordance with 2.1;

7.4 Updating of the Disclosure Schedules.

(a) Developer may supplement or amend the Developer's disclosure schedules after the Execution Date with respect to (a) deletions of Contracts that expire in accordance with their terms, in the absence of any breach or default, (b) additions of and amendments to Contracts executed in accordance with this Agreement, (c) additions of and amendments to Project Company Permits, (d) additions of, updates to, and supplements to Reports, and (e) any other changes that have occurred with respect to the Project Company, the Project Assets, or the Project since the Execution Date ("Updating Information"). Such updates shall occur no more than monthly and shall be Made Available on the same day and in the same manner as the Progress Reports delivered in accordance with 11.6.

(b) If any Updating Information includes information which relates to events or changes since the Execution Date that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Change then such Updating Information shall be a "Material Update." Buyer may, in its sole discretion, as a result of a Material Update proposed by Developer that has not been cured, elect to terminate this Agreement pursuant to 26.1(a) (after expiration of the cure periods set forth therein) and Buyer shall be the non-defaulting Party in connection

therewith. If Buyer consents in writing to any Material Update, notwithstanding the Updating Information provided prior to each such date, then the information constituting such Updating Information shall be deemed an "Accepted Update." With respect to any Accepted Update, (i) any incorrectness or breach caused by the Accepted Update shall be deemed cured as of the applicable Closing Date, (ii) the relevant Developer disclosure schedules shall be deemed to be supplemented, modified, or amended by such Accepted Update for all purposes of this Agreement, and (iii) any applicable representations and warranties to which such Accepted Update refers shall be deemed qualified by such Accepted Update.

ARTICLE 8
GENERAL OBLIGATIONS OF DEVELOPER

8.1 Developer's General Obligations.

(a) In consideration of the Purchase Price, Developer's general obligations under this Agreement are as follows:

(i) Prior to Closing, cause the Project to achieve Mechanical Completion in accordance with the terms of this Agreement and the EPC Contract.

(ii) At Closing, convey to Buyer the Membership Interests, which shall thereby convey all Project Assets and rights to the Project; and

(iii) After Closing, cause the Project to be completed and achieve Final Completion in accordance with the terms of this Agreement and the EPC Contract.

(b) On and prior to Closing, Developer shall work to accomplish its obligations, both independently and by and through the Project Company, as applicable.

(c) The Work shall be manufactured and executed in the manner set forth in the Technical Specification set forth in Appendix A, Appendix O, and Appendix P, or, where not so set forth, to the reasonable satisfaction of Buyer's Representative and all Work on the Site shall be carried out in accordance with Prudent Industry Practice and such reasonable directions as Buyer or Buyer's Representative may give.

(d) Obligations Prior to Closing. The key terms and conditions of the EPC Contract and the Major Supply Agreements are attached to this Agreement as Exhibit G and Exhibit H, respectively. Developer shall: (i) cause the Project Company to promptly (but in no event later than sixty (60) days after the Firm Date) enter into an EPC Contract on terms equal to or better (from Buyer's perspective as the future owner of the Project Company) than those attached hereto as Exhibit G and, within two (2) Business Days thereafter, issue the Full Notice to Proceed under each such Contract, (ii) cause the Project Company to promptly (but in no event later than sixty (60) days after the Firm Date) enter into the Major Supply Agreements on terms equal to or better (from Buyer's perspective as the future owner of the Project Company) than those attached hereto as Exhibit H and, within two (2) Business Days thereafter, issue the notice to proceed (or similar) under each such Contract, (iii) cause Contractor and Major Subcontractors to carry out and complete the Work in accordance with the requirements, duties and obligations imposed on Contractor and Major Subcontractors pursuant to the EPC Contract and the Major Supply Agreements; (iv) ensure that Contractor and every Major Subcontractor design and perform the Work in compliance with applicable Laws and the other requirements of this Agreement and the Transaction Documents; (v) maintain the requisite resources, experience, qualifications, and capabilities as are required to fully perform its obligations under this Agreement; (vi) keep Buyer informed as to the status of deliveries, and if any such

Materials or Major Equipment are not being properly manufactured or fabricated in accordance with the requirements of the Transaction Documents and, if different, the Project Company Contracts pursuant to which they were purchased, or do not otherwise conform with such requirements, promptly making Buyer aware thereof and taking necessary corrective action; (vii) subject to Buyer's prior review and approval, enter into all necessary Project Company Contracts (including the Real Property Contracts for necessary site control of the Site); (viii) manage the interconnection queue process and ensure the completion of all necessary interconnection studies and processes, including any affected system studies; (ix) subject to Buyer's prior review and approval, execute, and perform under the Interconnection Agreement; (x) obtain all Permits necessary for the design, engineering, development, construction, startup, testing, commissioning, completion, ownership, and commencement of operation of the Project, consistent with the Project Schedule; (xi) ensure that all of the Project Assets are legally and beneficially owned and titled in the name of the Project Company prior to Closing; and (xii) accomplish all other tasks that are incidental and necessary to Developer's general obligation hereunder to ensure that the Project is completed in accordance with this Agreement.

(e) Obligations After Closing. Developer shall accomplish all tasks that are incidental and necessary to Developer's general obligation hereunder to ensure that the Project is completed in accordance with this Agreement and to achieve Final Completion. For the avoidance of doubt, Developer shall be fully liable to Buyer hereunder for all acts and omissions of Contractor to the same extent as though any such act or omission had been performed or omitted to be performed by Developer directly until the achievement of Final Completion.

8.2 Contractor and Subcontractors.

(a) In connection with its performance of this Agreement, Developer shall purchase the Major Equipment from the Major Subcontractors set forth in Appendix C pursuant to the Major Supply Agreements, and Developer shall cause Contractor to procure any other materials, equipment, or other goods and services required for performance of the work under the EPC Contract. For procurement of services or equipment (other than the Major Equipment) from any Subcontractor not identified on Appendix C, Developer will be required to obtain the prior approval of Buyer prior to engaging such Subcontractor and any contract with any such Subcontractor shall comply with the minimum warranty requirements set forth herein; provided that, Developer shall cause any such contract to include without limitation, the provision of assignability of applicable warranties thereunder.

(b) Prior to Closing, Developer shall be fully liable to Buyer hereunder for all acts and omissions of Contractor and each Subcontractor to the same extent as though any such act or omission had been performed or omitted to be performed by Developer directly. In no case shall Developer's or the Project Company's engagement of Contractor or any Subcontractor relieve Developer of any of its obligations or Liabilities hereunder and, notwithstanding the use of Contractor or any Subcontractors hereunder, Developer shall remain fully and primarily liable to Buyer for the full and complete performance of Developer's obligations hereunder.

(c) Buyer shall have no contractual obligation to and shall not be deemed to be in privity with Contractor or any Subcontractor until Buyer takes assignment of the Membership Interests at Closing. Notwithstanding the above, after Closing, Buyer will indirectly be party to the EPC Contract, solely by and through its ownership of the Project Company.

8.3 Compliance with Law.

(a) Developer shall comply with all applicable Laws and Prudent Industry Practices, and shall cause Contractor and each Major Subcontractor to comply with all applicable Laws and Prudent Industry Practices with respect to the Work to be performed by such Contractor or Major Subcontractor. As between Developer and Buyer, Developer shall be responsible for ascertaining the nature and extent of any applicable Law, which may affect the Work, the Project or the operation of the Project prior to Substantial Completion, or the Site as a result of the performance by Developer of its obligations under this Agreement. Prior to Closing, Developer shall ensure that all the Work complies with applicable Laws, Prudent Industry Practice, the Project Company Permits, and the product manuals, copies of which are included in Appendix F.

(b) Subject to the preceding paragraph, Developer shall be responsible for Liabilities which may arise (including those that Buyer pays or becomes liable to pay) as a direct result of Developer's, Contractor's, or Major Subcontractor's non-compliance with applicable Law, or as a result of Buyer's inability to operate the Project in compliance with applicable Law due to the inaccuracy of Developer's representations and warranties or the breach by Developer of any of its obligations under this Agreement, other than Liabilities arising directly from any act or omission of Buyer or its employees and agents or, after the Closing Date, the Project Company.

8.4 Permits.

(a) Developer shall obtain and maintain in accordance with applicable Laws all Project Company Permits required in connection with the design, engineering, development, construction, startup, testing, commissioning, completion, ownership, and operation of the Project in accordance with this Agreement and the other Transaction Documents. Buyer shall be properly included as the permitee, co-permitee, or authorized party with respect to all Project Company Permits.

(b) Developer shall and shall cause Contractor and the Major Subcontractors to undertake commercially reasonable efforts to support Buyer in obtaining the Buyer Permits, including providing such engineering and environmental data and statistical information as may be reasonably requested by Buyer.

(c) Developer shall and cause Contractor and any Subcontractor to, at its or their sole cost and expense, obtain and maintain all applicable construction and construction-related Permits which are required by applicable Law in order to undertake and perform the Work and their respective obligations under the Project Company Contract to which they are a party.

8.5 Interconnection.

Developer shall establish a queue position with Transmission Provider for all requisite systems studies in order for Project Company and Transmission Provider to enter an Interconnection Agreement that allows for the Project to achieve Substantial Completion in accordance with the Project Schedule. Developer shall oversee and manage all necessary system studies and affected systems studies and shall engage in all necessary Transmission Provider processes. Developer shall pay for any and all Interconnection Costs, in accordance with 7.2(d). Developer shall be responsible for the management of the interconnection queue process. In the event that a Project is interconnected with the Buyer's transmission system, the Parties will also acknowledge in the Agreement that Buyer is acting solely in its capacity as an electric supplier as defined by Idaho Code 61-332A, that its activities under the Agreement are separate and apart from its duties as a transmission provider and that Buyer shall have no liability in its role as a transmission provider arising out of the Agreement.

8.6 Opportunities for Other Contractors.

Developer shall, in accordance with Buyer's reasonable instructions, afford to other contractors identified by Buyer all reasonable opportunities for carrying out their observation and inspection at the Site, provided that the same shall not materially obstruct or disturb the progress of the Work. Developer shall also afford access to Buyer's employees, including employees who will operate and maintain the Project, to perform their work at the Site.

8.7 Labor and Employment.

(a) Developer shall, and shall cause Contractor and each Major Subcontractor to, ensure that all construction Contracts and subcontracts of any tier for the Project be awarded in compliance with all applicable Law. Developer shall, and shall cause Contractor and each Major Subcontractor to, refrain from any discrimination against any employee on the basis of such employee's membership in any labor organization, or his or her lack of such membership. All employees working on the Project shall be permitted to exercise their right to engage in protected concerted activity, as defined in Section 7 of the National Labor Relations Act, as amended, or to refrain from doing so, without any discrimination or other adverse consequence. Developer shall, and shall cause Contractor and each Major Subcontractor to, comply with applicable Law regarding labor relations and employment matters. Any administrative or civil proceedings filed against a Developer Party shall be promptly reported to Buyer. Nothing in this provision shall affect any obligation of a Major Subcontractor under a lawful collective bargaining agreement applicable to some or all of such Person's operations on the Project.

(b) Developer shall be aware of, and familiar with, all collective bargaining agreements, which do or may pertain to or affect the work under this Agreement. Developer shall plan and conduct its operations so that its employees and Subcontractors of any tier will work harmoniously with Buyer employees and other workers employed on the same or related projects to assure that there will be no delays, work stoppages, excessive labor costs, or other labor difficulties. Developer shall ensure that Contractor and each and every Major Subcontractor comply with all applicable Laws pertaining to such labor and employment.

(c) Scarcity and Quality of Labor. Notwithstanding anything to the contrary set forth herein, Developer shall have no Claim for an extension of the Outside Closing Date or a Claim for loss, damage, or additional costs and expenses of any kind in respect of any alleged or proved unsuitability, scarcity, inefficiency of the labor it may engage or wish to engage or any requirement to engage union labor.

(d) Equal Employment Opportunity and Other Non-Discrimination Clauses.

(i) Developer shall and shall cause Contractor and all Subcontractors, to at all times, comply with all applicable Laws applicable to employees, including those governing wages, hours, employment discrimination, disability and medical leave, employment of minors, health and safety. Developer shall comply with equal opportunity applicable Laws to the extent that they are applicable.

(ii) Developer shall indemnify, defend, and hold harmless Buyer Indemnified Parties from, for, and against all losses, costs, and damages by reason of any violation thereof and from, for, and against any Claims and Liabilities and other costs arising out of Developer's failure to comply with the provisions set forth in Section 8.7(d).

(iii) Developer shall execute and Make Available to Buyer a certificate of compliance with respect to equal employment opportunity compliance using applicable Buyer's form of certificate before starting to perform Work under this Agreement.

(e) Workers Compensation. Developer shall comply with all applicable Laws regarding workers' compensation and shall, prior to commencing Work, furnish proof thereof satisfactory to Buyer. Developer shall ensure Contractor and Subcontractors have obtained workers' compensation insurance required by Law and as further set forth in this Agreement.

8.8 Authority for Access for Inspection.

Inspection of the Work at the Site and attendance at meetings (whether conducted in-person, telephonically or through similar medium) relating to the Project which are attended by Developer and Contractor or Major Subcontractor and related to status, progress, quality, scope, schedule and coordination shall at all times be afforded by Developer to Buyer, Buyer's Representative, and such other Persons as shall be designated by Buyer or Buyer's Representative. Buyer, in its inspection, shall give due consideration to the needs of Developer to carry out Developer's obligations and strive not to hinder or unduly impede Developer while carrying out such inspection. Buyer, in its inspection, may observe the progress and quality of the Work to determine if the Work is proceeding in accordance with the Transaction Documents and Project Company Contracts. Inspections under this 8.8 are solely for the benefit of Buyer and any inspection or failure to inspect and any objection or failure to object by Buyer shall not (a) relieve Developer, Contractor, or any Major Subcontractor of its respective obligations under any Project Company Contract, or (b) be used as evidence that Buyer agreed that Developer, Contractor, or any Major Subcontractor had fulfilled any obligations under any Transaction Document or Project Company Contract or that Buyer had waived any of its rights under any Transaction Document. Buyer, Buyer's Representative, Buyer's employees, Buyer's invitees, and such other Persons as shall be designated by Buyer or Buyer's Representative shall follow and comply with the Contactor's Safety Assurance Program at all times while present on the Site.

8.9 Contractor Drawings and Manuals.

(a) Developer shall at all times keep a copy of the most recent version of the Contractor Drawings and Manuals at Developer's office on the Site to be made available for Buyer's review. In addition, Developer shall provide and make available to Buyer electronic versions of the Contractor Drawings and Manuals accessible by Buyer through a file transfer protocol site to be maintained by Developer.

(b) Developer shall cause to be set forth in the Contractor Drawings and Manuals provided to Buyer such information as is required to operate and maintain the Work, including the information set forth in Appendix G. The Contractor Drawings and Manuals shall be (i) prepared in accordance with the Technical Specification, Appendix F and Appendix G, and when completed, shall be in sufficient detail to accurately represent the Project as constructed. The Contractor Drawings and Manuals shall be maintained and be available, with up-to-date drawings, specifications, and design sheets, for the training of Buyer's personnel as set forth in 8.10.

(c) At least sixty (60) days prior to the expected Closing Date, Developer shall provide Buyer with initial drafts of the final Contractor Drawings and Manuals for review (the "Draft Manuals"). The Draft Manuals shall contain such information described in 8.9(b), other than the drawings which, in accordance with this 8.9, will be maintained to be up-to-date. Two (2) complete sets of the Draft Manuals shall be provided to Buyer at least sixty (60) days prior to Substantial Completion and shall be a condition to the achievement of Substantial Completion.

(d) Developer shall provide to Buyer both hard and electronic final copies of the Contractor Drawings and Manuals. Developer shall provide to Buyer five (5) final hard copies of the Contractor Drawings and Manuals within sixty (60) days after achievement of Substantial Completion. Neither Buyer nor the Project Company shall be required to deliver the Certificate of Final Completion until all such Contractor Drawings and Manuals have been so delivered.

(e) Any modifications to the Contractor Drawings and Manuals made necessary as a consequence of any punch list items or modifications to the Work shall be issued as addenda to the Contractor Drawings and Manuals within thirty (30) days following completion thereof.

8.10 Training.

(a) Training of Buyer's personnel (or other employees or agents of Buyer) shall be given by Developer or Contractor prior to the Substantial Completion Date as required by the Technical Specification, in accordance with the EPC Contract, and shall include training (including on-site and classroom) on the interconnection and technical specifications of the Project and operation and maintenance of the Project. Such training shall be provided directly to Buyer's personnel and shall be conducted by a trainer experienced in the operation, and maintenance of the Project.

(b) Starting at least sixty (60) days prior to the energization of the Project at the Site and continuing until Final Completion, Developer shall oversee the development of and provide qualified and experienced support for Buyer's execution of a practical and participatory training program at the Site for an adequate number of employees designated by Buyer, which personnel shall be experienced in energy storage facility operations appropriate to their respective job descriptions.

8.11 Safety.

(a) Developer shall be solely responsible for being aware of and initiating, maintaining and supervising compliance with all safety Laws, regulations, precautions, and programs in connection with the performance of this Agreement. Prior to Closing, the Contractor's health and safety plan for the Project will be attached hereto as Appendix M (the "Contractor's Safety Assurance Program"). Prior to the start of, and throughout the performance of, the Work, Developer shall ensure that each of its employees, together with all employees of its Contractor and each Major Subcontractor, are fully informed concerning all safety, health, and security Laws and requirements pertaining to the Work and the Contractor's Safety Assurance Program; are qualified to perform the Work under applicable Occupational Safety and Health Administration ("OSHA") regulations; have completed all training required under applicable OSHA regulations to perform the Work; have all licenses and certifications required to perform the Work; and understand Prudent Industry Practice. Developer shall conduct all operations under this Agreement in accordance with the Contractor's Safety Assurance Program.

(b) In the event Developer, Contractor, or Major Subcontractor fails to promptly correct any violation of applicable Law, Prudent Industry Practice, or the Contractor's Safety Assurance Program, Buyer may suspend all or any part of the Work until such time as Developer corrects the violation. Developer shall not be entitled to any extension of time or reimbursement for costs caused by any such suspension order. Failure of Buyer to order discontinuance of any or all of Developer's operations shall not relieve Developer of its responsibility for breaches of applicable Law or the Contractor's Safety Assurance Program. Developer shall maintain an accurate record of and shall promptly report to Buyer all cases of property damage in excess of One Hundred Dollars ($100.00) to property of third parties (not including Contractor or any Subcontractor) and of death, occupational diseases, or injury to employees or any other third parties and incident to performance

of Work under this Agreement. Developer shall promptly notify Buyer and provide a copy of any safety citation issued by any Governmental Authority.

8.12 Intellectual Property Rights.

(a) Developer shall not take any action that would violate or infringe any Person's intellectual property rights.

(b) Developer shall, at its sole expense, settle or defend and pay any costs (including attorneys' fees) and damages awarded in connection with, and shall defend, indemnify, and hold harmless each Buyer Indemnified Party from, for, and against any and all Claims and Liabilities, including without limitation, suits or proceedings based on a Claim that any part of the Work or the ownership or operation of the Project infringes or violates any patent, copyright, or any other intellectual property right belonging to a third party. Buyer shall give Developer notice of any such Claim promptly after Buyer has actual knowledge thereof; provided, that the omission of Buyer to give such notice shall not relieve Developer of its obligations hereunder except to the extent that such omission results in a failure of actual notice to Developer and Developer is damaged as a result of such failure. The provisions of ARTICLE 22 and Article 31 shall also apply to any Claim under 8.12(b).

(c) Developer shall obtain and transfer to Buyer perpetual, fully-paid up, royalty free, transferable licenses to use all computer programs and any other intellectual property necessary for the ownership and operation of the Project from and after the Closing, together with all warranties related thereto.

8.13 Developer's Representatives.

(a) Developer shall employ (directly or through contract) one or more competent representatives (each, a "Developer's Representative"), whose name or names and details of qualifications and previous experience shall have been provided to Buyer and Buyer's Representative by Developer, to manage the Work and who shall have Developer's authority in respect of all matters arising out of or in connection with this Agreement and the Work. Any orders or instructions which Buyer or Buyer's Representative may give to Developer's Representative shall be deemed to have been given to Developer.

(b) Key Personnel.

(i) Prior to beginning the Work, Developer shall provide to Buyer, a list setting forth the name of the natural Person for each Key Personnel position for itself, Contractor and all Major Subcontractors performing material portions of the Work. Throughout performance of the Work, all employees assigned by Developer to perform any of Developer's or Project Company's obligations shall be fully qualified, certified, and licensed to perform the tasks assigned them.

(ii) Appendix H shall be amended when Key Personnel change during the performance of the Work.

(iii) Developer shall give Buyer fifteen (15) days advance written notice in the event Developer intends to remove or change any of its Key Personnel assigned to the Work or to reassign any such Key Personnel to another project.

8.14 Developer's Personnel/Drugs, Alcohol and Firearms.

With regard to the performance of the Work, Developer shall, and shall ensure that Contractor and any Major Subcontractor shall, only employ Persons qualified to perform the Work.

Developer represents that Developer maintains a workplace violence standard that prohibits violence, firearms, and other weapons on the Work site and a drug-free workplace policy that complies with all Laws and prohibits the use of controlled substances or alcohol while performing the Work under this Agreement, and Developer shall ensure Contractor, Subcontractors at all tiers, and their respective employees and agents shall not possess, use, sell or be under the influence of alcohol, drugs, or other controlled substances (excluding those used or possessed pursuant to a valid prescription and which do not adversely affect the Work.)

8.15 16.7ARTICLE 27ARTICLE 27ARTICLE 12Spare Parts Inventory.

(a) The EPC Contract shall include all spare parts and consumables necessary for the installation, startup, and commissioning of the Project and the complete performance of the Work through Final Completion. Such spare parts and consumables shall be located at the Site and immediately available to Developer Parties to ensure that all Work, including testing and commissioning activities continue unimpeded by the absence of such onsite spare parts and consumables. Buyer shall not be liable in any way for Developer's inability to achieve Substantial Completion or Final Completion due to lack of any spare parts or consumables and the Contractor shall not be entitled to a Change Order in respect of the same.

(b) Developer shall submit to Buyer a proposed list of spare parts and associated pricing for the operation of the Project following Final Completion in accordance with the EPC Contract. Within thirty (30) days of receipt of the proposed list, Buyer shall determine, in its discretion, to procure such spare parts or, at Buyer's election pursuant to a Buyer-Initiated Change, request Developer to procure or cause to be procured such spare parts and have such spare parts delivered to the Site prior to the Closing Date. Upon the request of Buyer, Developer shall meet with Buyer and its designees to discuss the proposed inventory of spare parts.

(c) If available, Buyer shall allow Developer to use any spare parts or consumables owned by Buyer, but in no event shall Buyer be liable or shall Developer be entitled to a Change Order in the event that the absence of any particular spare part or consumable impacts completion of the Work. In the event Developer uses Buyer's spare parts and consumables with Buyer's written consent, such spare parts and consumables shall be expeditiously replaced by Developer at its sole cost and expense. Buyer does not warrant the condition, quality, suitability, absence of defects, fitness for any purpose, or aspect of any Buyer-supplied spare part and if Developer uses any Buyer-supplied spare part, it does so at its own risk.

8.16 Further Assurances.

(a) Developer shall take all such further actions and execute all such further documents and instruments as Buyer may at any time reasonably determine to be necessary to further carry out and consummate the transactions contemplated by the Transaction Documents.

8.17 Other Liens.

(a) Developer shall not create, incur, assume, or suffer to exist, directly, or indirectly, any Lien on any of the Project Assets or the Project Company, whether now owned or hereafter acquired in connection with the Project.

(b) On or prior to the Closing Date, Developer shall cause Contractor and all Major Subcontractors to deliver Lien releases to Project Company covering all work performed and materials furnished as of the Closing Date, in the forms attached in Appendix I.

8.18 Restriction on Fundamental Changes.

(a) Until after Final Completion shall have occurred, Developer shall not, without Buyer's prior written consent, enter into any business combination, merger, or consolidation, or liquidate, wind-up, dissolve (or suffer any liquidation or dissolution), or discontinue its business.

(b) Until after Final Completion shall have occurred, and except in the ordinary course of business (such as the replacement or substitution of items from customary wear and tear), Developer shall not convey, sell, lease, assign, transfer, or otherwise dispose of any of Project Assets.

8.19 Records and Accounts.

Developer and Project Company shall maintain all records and accounts in accordance with GAAP consistently applied and in Dollars in order to support any and all invoices, Claims, and disputes under this Agreement. Developer shall permit Buyer, upon reasonable prior notice and during business hours, to audit Developer's records and accounts related to the Membership Interests and the Project to verify invoice amounts and to confirm any increases or decreases to the EPC Contract Price and any EPC Change Orders, as well as any report or correspondence related to Project Company Permits or safety or environmental compliance.

8.20 Data Breaches.

Developer shall promptly notify Buyer upon the occurrence of any security breach, cyberattack, other data security, or cyber incident or unauthorized access to any Developer IT Asset, which resulted in the unauthorized access, unauthorized use, misappropriation, modification, encryption, corruption, disclosure, or transfer of any material information or data contained therein relating to the Project Company or the Project Assets.

ARTICLE 9
GENERAL OBLIGATIONS OF BUYER

9.1 Buyer's General Obligations.

Buyer shall:

(a) keep Developer informed as to the status of any governmental or regulatory or other activities undertaken by Buyer that relates to the Project and that is likely to materially and adversely affect Developer's ability to perform the Work;

(b) comply with all applicable Laws;

(c) plan and conduct its operations so that its employees and subcontractors of any tier will work harmoniously with Developer employees and other workers employed on the same or related projects; and

(d) maintain its records and accounts in accordance with GAAP consistently applied in order to support any and all invoices, Claims, and disputes under this Agreement.

9.2 Buyer's Representative.

(a) Buyer's Power to Delegate. Buyer may at any time delegate to its representative (the "Buyer's Representative") any of its duties and obligations (other than its payment obligations) under this Agreement. Except as explicitly provided herein, any written decision, instruction, or order given

by Buyer's Representative to Developer in accordance with such delegation shall have the same effect as though it had been given by Buyer.

(b) Duties of Buyer's Representative. Buyer's Representative shall carry out such duties as are specified in this Agreement but except as expressly provided in this Agreement neither the performance of or the failure to perform such duties whether properly or at all by Buyer's Representative, nor the fact that a Buyer's Representative has been appointed by Buyer shall in any way relieve Developer of any responsibility or liability for any of its obligations under this Agreement. No approval of, or consent to, or failure to approve or consent to any matter by Buyer or Buyer's Representative shall relieve Developer of any liability or any of its obligations under this Agreement.

9.3 Standard of Conduct.

Unless explicitly stated otherwise in this Agreement, whenever the Parties or their representatives are required to exercise their discretion: (a) to make a decision, (b) to give consent or approval, (c) to express satisfaction or approval, (d) to determine value, or (e) otherwise to take action which may affect their respective rights and obligations hereunder, the exercise of such discretion shall be made in a reasonable manner and in good faith consistent with this Agreement so as to reasonably minimize any disruption to the other Party, and having regard to all the circumstances reasonably applicable thereto.

9.4 Buyer Response.

If Developer is required to obtain the approval of, or consent from, Buyer pursuant to the terms of this Agreement, upon receipt of a request for such approval or consent from Developer, Buyer shall, in its reasonable discretion (which shall not be unreasonably withheld, conditioned, or delayed), respond (a) granting such approval or consent, (b) denying such approval or consent or (c) requesting supporting material or information, in the time expressly specified in this Agreement or when no time is referenced, within a reasonable time.

ARTICLE 10
WORKING ARRANGEMENTS

10.1 Site Security.

(a) Developer shall be responsible for Site security, which shall be in accordance with Developer's established security procedures, which, at a minimum, shall ensure compliance with all requirements of applicable Laws, the Project Company Permits, the Technical Specification and this ARTICLE 10. All Developer Parties shall strictly adhere to all Site security provisions.

(b) Unless and until care, custody, control and risk of loss transfer to Buyer pursuant to this Agreement, Developer shall be fully responsible for all Materials and Equipment.

10.2 Preservation of Public and Private Access.

Developer Parties shall not damage, close, or obstruct any highway, road, or other public or private easement, except to the extent allowed by applicable Laws or the Project Company Permits. If such facilities are closed, obstructed, damaged, or made unsafe by Developer Parties, Developer shall, at its sole cost and expense, make such repair as necessary and shall also provide such temporary guards, lights, and other signals as may be necessary or required for safety or by applicable Laws or the Project Company Permits.

10.3 Avoidance of Noise and Disturbance.

All Work at the Site shall be carried out in such a way as to minimize noise and disturbance and Developer shall defend, indemnify, and hold harmless all Buyer Indemnified Parties from and against all third party Claims and Liabilities for injury, including death, and property damage caused by, arising out of, or in connection with noise or other disturbance, falling outside of the limits specified in applicable Laws or the Project Company Permits and created by Developer Parties in connection with performing the Work.

10.4 Fencing, Protection, Lighting.

Developer Parties shall provide adequate safety barriers, signs, lanterns, and other warning devices and service to properly protect any person having access to or near the Site in accordance with the requirements of applicable Laws, Permits, and the Technical Specification. Developer shall be solely responsible for any act of trespass or any damage to adjacent property resulting from or in connection with the Work or its operations under this Agreement.

10.5 Site Services.

Developer Parties shall be responsible for obtaining and the cost of electricity, water, fuel, air, or other services as the Developer Parties may require for the purposes of the Work.

10.6 Cleanup.

Developer Parties shall keep the Site, including the Work area and storage areas used by Developer Parties, free from accumulation of waste materials or garbage arising out of the Work, and shall, prior to completion of the Work, remove and properly dispose of any such waste materials or garbage from and about the Site in accordance with applicable Laws. Upon completion of the Work, Developer Parties shall leave the Site in a condition reasonably satisfactory to Buyer.

10.7 Regulated Materials.

At all times Developer is responsible for preventing Releases of Regulated Materials brought to or generated at the Site by Developer Parties or preexisting at the Site. On and prior to the Closing Date, Developer shall manage and be responsible for any Regulated Materials, whether brought on to or generated at the Site by Developer Parties or pre-existing at the Site, according to applicable Law.

10.8 Wildlife and Cultural Concerns.

(a) If any species surveys or studies indicate that a direct or indirect taking of wildlife listed as threatened, endangered, or other special status under Environmental Laws, or any impacts to habitat of such wildlife, will occur as a result of development or construction activities (including due to grading, ground disturbance, tree clearing, or nest removal) or during operation of the Project, Developer shall consult with the relevant Governmental Authorities to determine whether incidental take authorization or a species habitat conservation or management plan is required under Environmental Laws for the Project or the Site. If required by any Project Company Permit, Developer shall coordinate with Buyer to develop a plan for addressing such impacts, which may include coordination with federal and state wildlife Governmental Authorities. During development and construction of the Project, any wildlife protected by Environmental Laws discovered on the Site shall be reported in accordance with any applicable conservation or management plans, if any.

(b) Developer shall prepare and implement an unanticipated discoveries plan that specifies the procedures Developer and its contractors and subcontractors will follow if any relics, items, or structures with archaeological, cultural, or historical value or any articles (including fossils, coins, articles of value or antiquity, or any Native American relics) are discovered on Site.

ARTICLE 11
PROJECT SCHEDULE

11.1 Project Schedule.

Attached hereto as Appendix B is a preliminary project schedule setting forth the major tasks that must be completed by Developer or Project Company, as the case may be (each a "Milestone"), and completion dates for such tasks ("Milestone Completion Dates") as provided by Developer in accordance with the Technical Specification, including the Critical Milestones and associated Critical Milestone Completion Dates which will be consistent with Appendix J. The preliminary project schedule shall include a Milestone (and a corresponding Milestone Completion Date) for development of a final project schedule (the "Project Schedule") setting forth in more detail the Milestones and Milestone Completion Dates, including the Critical Milestones and Critical Milestone Completion Dates. Subject to 11.4, Developer may update the Project Schedule, in accordance with the EPC Contract at its sole discretion, provided that the Milestone Completion Dates for the final three Milestones (Mechanical Completion, Substantial Completion, and Final Completion) remain unchanged.

11.2 Form of Project Schedule.

The Project Schedule shall be in the form set forth in Appendix B. The Project Schedule shall specify any tasks, obligations, or responsibilities under this Agreement (each a "Buyer Obligation") which Buyer must perform or fulfill for Developer to achieve the Milestone Completion Dates for each Milestone, and the date by which Buyer is required to fulfill each Buyer Obligation in accordance with this Agreement. Developer shall deliver the Project Schedule and any updates thereto in a native scheduling software format reasonably acceptable to Buyer.

11.3 Rejection of Project Schedule.

(a) No later than thirty (30) days following execution of the EPC Contract, Developer shall submit a final Project Schedule to Buyer's Representative for its review and comment (provided that the Critical Milestones and associated Critical Milestone Completion Dates are not different from the Critical Milestones and Critical Milestone Completion Dates set forth in Appendix J).

(b) Subject to 9.2(b), if Buyer's Representative comments on any Project Schedule submitted by Developer, Developer shall, within seven (7) days of such comments, submit a copy to Buyer's Representative of the final form of Project Schedule consistent with the Buyer's Representative's comments.

(c) Buyer's Representative shall have the right to reasonably request Developer to vary, amend, substitute, or otherwise change the Project Schedule after approval thereof. Any such variation, amendment, substitution, or other change (other than as provided in 11.5 or caused by Developer's failure to perform any of its obligations in accordance with the terms of this Agreement) shall be considered a Buyer-Initiated Change under 12.1.

11.4 Alterations and Updates to Project Schedule.

Following Buyer's acceptance of the final Project Schedule, Developer shall not, without the prior written consent of Buyer's Representative, make any material change to the Project Schedule, including changing any Critical Milestone or Critical Milestone Completion Date; provided, that Buyer shall respond to such request by Developer within seven (7) Business Days of receipt from Developer, and Buyer's failure to respond within such seven (7)-Business Day period shall be a Buyer-Caused Delay. Developer shall provide a Level 3 Project Schedule and any updates thereto on (a) prior to the issuance of the Full Notice to Proceed, a monthly basis and (b) following the issuance of the Full Notice to Proceed, a weekly basis, including the incorporation of delay and acceleration analyses where appropriate.

11.5 Recovery of Project Schedule.

If, at any time or from time to time, Developer fails to achieve a date or Milestone on the Project Schedule, then, upon the written request of Buyer, Developer shall promptly, but in any event within five (5) Business Days of such request, submit a written recovery plan to complete all necessary Work to the extent reasonably practicable to achieve the remaining dates or milestones in the Project Schedule. Buyer shall promptly submit reasonable suggestions to such written recovery plan. To the extent reasonable and feasible, Developer shall incorporate such suggestions into such recovery plan or shall provide reasonable explanation for why such suggestions were not incorporated, which reasonable explanations may include alternative Work acceleration proposals. Developer shall diligently prosecute the Work in accordance with such recovery plan. Neither approval by Buyer of such recovery plan nor Developer's prosecution of the Work in compliance with such recovery plan shall (a) be deemed in any way to have relieved Developer of its obligations under this Agreement relating to the failure to timely achieve a date or Milestone on the Project Schedule or (b) be a basis for a Change Order or any other compensation or an increase in the Purchase Price.

11.6 Progress Reports.

(a) Developer shall Make Available to Buyer a progress report addressing all material elements of the Work (each, a "Progress Report") on or before the fifth (5th) day of each month for Work during the previous month. Developer shall Make Available an update to any Progress Report upon Buyer's reasonable request. Developer shall promptly notify Buyer in writing at any time that Developer has reason to believe that there will be a material deviation in the Project Schedule and shall set forth in such notice the corrective action planned by Developer to remedy the same.

(b) In addition to the applicable requirements set forth in the Technical Specification and Appendix K, the Progress Reports submitted by Developer shall specify in detail:

(i) any fact, event, or circumstance (each a "Project Problem") encountered by any Developer Party during the preceding month (including the failure of Buyer to perform any Buyer Obligations under this Agreement) which might (A) prevent Developer from completing any Milestone by its respective Milestone Completion Date or (B) cause Developer to incur additional expenses in completing any Milestone;

(ii) the estimated length of any delay and the estimated amount of any additional costs and expenses, if any, which may be chargeable to Buyer hereunder, as a result of any Project Problem identified pursuant to this Agreement; and

(iii) to Developer's Knowledge, the cause of any Project Problem specified pursuant to this Agreement and the specific steps taken or proposed to be taken by Developer to correct such Project Problem.

(c) In the event that Developer fails to specify in writing any Project Problem (an "Unidentified Project Problem") with respect to a given monthly period in the appropriate Progress Report and in such manner and at such time as specified pursuant to this Agreement as a Project Problem, Developer shall not be entitled to rely on any such Unidentified Project Problem as a purported justification for either (i) claiming that it is entitled to receive any additional amounts pursuant to this Agreement (including damages arising out of any alleged failure by Buyer to perform any of Buyer Obligations) or (ii) failing to complete any Milestone by the specified Milestone Completion Date.

11.7 Progress Meetings.

Progress meetings will be held as deemed necessary by Buyer, but normally shall be held once every two (2) weeks. Buyer, Buyer's Representative, and Buyer's Engineer shall be entitled to attend such progress meetings. Progress meetings will be utilized to review the progress of the Work and its compliance with the Project Schedule and discuss any delays, unusual conditions, or critical items, which have affected or could affect the progress of the Work.

11.8 Schedule Relief.

Developer will be entitled to schedule relief for certain events affecting Developer's performance under the Agreement, including:

(a) Material delays caused by a delay of Buyer or its representatives beyond the response time period specified in the Agreement in responding to or commenting upon Project engineering and designs ("Buyer-Caused Delays"), which shall entitle Developer to cost relief for demonstrable additional direct costs due to such delay as provided in the Agreement in addition to schedule relief; and

(b) Force Majeure events with mutually agreed upon mitigation, notice, materiality thresholds, and documentation requirements as set forth in Article 24.

ARTICLE 12
CHANGE ORDERS

12.1 Changes.

(a) No Change shall be effective unless authorized by Buyer's Representative and issued by the Project Company in accordance with the provisions of this ARTICLE 12. The EPC Contract shall include provisions similar to those contained in this ARTICLE 12, to ensure its enforcement, including a form of Change Order that substantially conforms to Appendix N-1.

(b) Buyer shall, when reviewing each potential Change and determining the nature and extent of any Change Order which is requested or required in connection with this Agreement, consider the following information:

(i) The nature, scope, and extent of the Change, including any additions or deletions from the Scope of Work;

(ii) The effect, if any, of the Change on the Project Schedule, including the Outside Closing Date;

(iii) For Buyer-Caused Delays, the effect, if any, of the Change on the Purchase Price; and

(iv) Such other information as may reasonably be necessary for the implementation of the Change Order, including the effect on any other provisions hereof which may be impacted by the Change.

Buyer shall, in the case of a Buyer-Initiated Change or Required Change Order and may, if it elects to do so, in the case of a Developer-Initiated Change, approve such Change Order having regard to all such circumstances as is just and equitable and in a form substantially similar to the form of Change Order attached hereto as Appendix N-1 which shall address, to the extent required, all of the issues set out in this 12.1(b).

(c) Developer shall make any request for a Change Order which is permitted to be made in accordance with 12.2 in the form of a Change Order Request which shall be delivered to Buyer in writing as soon as possible and in any event within five (5) days after Developer becomes aware of the facts or circumstances giving rise to a Change which it reasonably believes necessitates a Change Order. In no case shall Developer Parties be entitled to recover costs in a Change Order that arise prior to the date of the Change Order Request. Any Change Order Request shall be substantially and in all material respects in the form attached hereto as Appendix N-2 and include the following information: (i) the facts or circumstances giving rise to the Change; (ii) the impact, if any, which the proposed Change is likely to have on Project Company or Developer's costs under the third-party Project Company Contracts, including the EPC Contract Price, the Project Schedule, including the Outside Closing Date, and any other provisions hereof; and (iii) such other information which Buyer may reasonably request in connection with such proposed Change.

(d) The issuance of a Change Order shall not result in the invalidation of this Agreement.

(e) Notwithstanding any provision to the contrary in this Agreement, no facts or circumstances will constitute grounds for a Change Order unless and only to the extent that the costs of such Change Order is in excess of [___] ($[___]). Neither Party shall manipulate the foregoing process, by aggregating or disaggregating cost or facts or circumstances, as the case may be, for the purpose of recovering or avoiding additional cost or time in accordance with the foregoing.

(f) For the avoidance of doubt, a Change Order will only result in an adjustment to the Purchase Price if the Project Company or Developer's costs under any third-party Project Company Contract, including the EPC Contract Price, are increased due to (i) a Buyer-Caused Delay or (ii) a Buyer-Initiated Change. EPC Change Orders that increase Project Company or Developer's costs under any third-party Project Company Contract, including the EPC Contract Price, for any reason other than a Buyer-Caused Delay or a Buyer-Initiated Change, whether such Change Order is issued before, on or after Closing, will be the sole responsibility of Developer and will not result in an increase of the Purchase Price.

12.2 Procedure for Changes.

(a) Changes Initiated by Developer. Developer may, at any time, submit a Change Order Request to Buyer pursuant to 12.1(c) for improvements, efficiencies, cost savings, and other similar Changes to the Work (each a "Developer-Initiated Change"), but no such Change Order Request shall be carried out by Developer except pursuant to a Change Order executed by Buyer's Representative, which execution shall be in Buyer's discretion. Any Change Order Request submitted pursuant to this 12.2(a) shall also contain and be supplemented with such information as Buyer may reasonably require in order to determine whether to accept or reject the Change Order Request.

(b) Changes Initiated by Buyer. If Buyer desires to make a Change to the Scope of Work or to the Project Schedule (each a "Buyer-Initiated Change") not comprising recovery Work due to the negligence of or breach of this Agreement by any Developer Party, Buyer will submit a written Change Order Notice to Developer, substantially in the form of Appendix N-3, comprising the nature and extent of the proposed change to the Scope of Work together with, to the extent available or applicable, Buyer's opinion as to those matters required to be taken into account in accordance with 12.1. Developer will promptly review the Change Order Notice and notify Buyer in writing within a reasonable amount of time of the options for implementing the proposed Buyer-Initiated Change (including, if possible, any option that does not involve an increase in Project Company or Developer's costs under any third-party Project Company Contract, including the EPC Contract Price, and an extension of the Project Schedule) and the estimated effect(s), if any, that each such option would have on Project Company or Developer's costs under any third-party Project Company Contract, including the EPC Contract Price, and Project Schedule, and any other affected provision herein, as applicable. Such response shall also contain all those matters required to be set out in a Change Order Request. Based upon such information, Buyer's Representative may, in his or her discretion, issue a Change Order for a Buyer-Initiated Change.

(c) Required Change Orders. Project Company shall be entitled to the issuance of a Change Order pursuant to this ARTICLE 12 in connection with any circumstances which constitute a Change and which are attributable to the matters identified in subparagraphs (i) and (ii) below (each a "Required Change Order"):

(i) Due to Change in Law. If and to the extent that a Change in Law after the Execution Date but before Final Completion, results in a material increase in the cost of the Work or a material extension of the Project Schedule.

(ii) Change Order Due to Buyer-Caused Delay. If and to the extent that Developer is entitled to a Change Order due to a Buyer-Caused Delay pursuant to 9.4, provided that such failure is not the result of Developer Parties' negligence or breach of this Agreement.

Developer shall use or have used commercially reasonable efforts to mitigate potential delays to the Project Schedule or potential increases to Project Company or Developer's costs under any third-party Project Company Contract, including the EPC Contract Price (the cost of such mitigation efforts to be addressed in any applicable Change Order). For the avoidance of doubt, a Change Order will only result in an adjustment to the Purchase Price if Project Company or Developer's costs under any third-party Project Company Contract, including the EPC Contract Price, are increased due to (i) a Buyer-Caused Delay or (ii) a Buyer-Initiated Change. Any costs or expenses (including those incurred as a result of a delay) associated with Required Change Orders due to a Change in Law, as set forth in 12.2(c)(i), will be the sole responsibility of Developer except to the extent an adjustment to the Purchase Price is expressly required in accordance with 2.6(b).

(d) Except in the circumstances as set out in this 12.2 and with respect to which an application is properly made in accordance with this ARTICLE 12, Developer shall not be entitled to seek a Change, a Change Order, extension of the Project Schedule, including the Outside Closing Date, an increase of Project Company or Developer's costs under any third-party Project Company Contract, including the EPC Contract Price, or the receipt of additional remuneration or reimbursement with respect to the Work.

12.3 Continued Performance Pending Resolution of Disputes.

Notwithstanding and pending the resolution of any dispute with respect to a Change or Change Order, Developer Parties must proceed with the Work and the performance of any Change

ordered by Buyer as a result of a Buyer-Initiated Change or a Required Change Order, unless Buyer's Representative directs Developer not to proceed.

12.4 Preservation of Schedule and Contract Price.

Where any proposed Change may give rise to an extension of the Project Schedule or an increase in Project Company or Developer's costs under any third-party Project Company Contract, including the EPC Contract Price, then Buyer reserves, in its discretion and to the extent possible, the right to require Developer to vary, amend, or effect such other Change to the Work in such a manner as will mitigate or avoid the requirement for such extension of the Project Schedule or increase in Project Company or Developer's costs under any third-party Project Company Contract, including the EPC Contract Price.

ARTICLE 13
WORKMANSHIP AND MATERIALS

13.1 Manner of Execution.

The Work to be supplied, including all materials, manufactured components and labor and services to be performed, shall be designed and executed in the manner set out in this Agreement and the EPC Contract. Except where the manner of design, manufacture, and execution is otherwise specifically set out in this Agreement or the EPC Contract, the Work shall be designed, manufactured and executed in a proper and workmanlike manner, all in accordance with accepted industry standards, applicable safety standards, and Prudent Industry Practice.

13.2 Condition of Materials.

The Materials and Equipment, including any rented Equipment, fixtures, software, any related items of personal property, and other tangible personal property of Developer Parties constituting the Project shall be new and carrying the manufacturer's warranties and guarantees required under ARTICLE 19, and shall be suitable for their current use in the storage of energy in accordance with the Technical Specification. All Equipment and Materials shall be procured solely for use in connection with the Project.

13.3 Inspection.

Developer shall require that Contractor use commercially reasonable efforts to include rights in all contracts with Subcontractors to permit Buyer and the Buyer's Engineer to audit, inspect, test, and observe the Major Equipment at the facilities of any Subcontractor or the manufacturer of Major Equipment, or the location where such Major Equipment is being transported or stored, and, if permitted, Developer shall ensure reasonable, adequate, and safe access to such facilities for such purposes, subject to any reasonable safety rules or restrictions imposed by such Subcontractor or manufacturer.

ARTICLE 14
DRAWINGS

14.1 Drawings.

(a) Following receipt and approval of the Project Schedule, Developer shall prepare a contract documentation and drawing list identifying those key data, calculations (as required for regulatory purposes and consents), drawings, technical specifications, and concepts required for review for conformance with this Agreement.

(b) Developer shall, within the time detailed in the Project Schedule or elsewhere in this Agreement, submit to Buyer's Representative in hard copy and electronic form (the specific form of which shall be agreed to by the Parties) such key data, calculations, drawings, technical specifications, and concepts.

(c) Developer shall timely submit to Buyer's Representative drawings of temporary and permanent buildings and structures and any other information required under the terms and conditions of consents, licenses, and planning permissions obtained by Developer or Buyer.

(d) Buyer's Representative may, in its discretion, disapprove any drawing; provided, however, it shall notify Developer of any such disapproval within ten (10) Business Days of receipt, except for documents and information (including calculations) which are required by Buyer's Representative for consultation with Buyer's third-party contractors for the purposes of the interconnections at terminal points, where the period shall be fifteen (15) Business Days. Developer shall supply additional copies of documents or information (including calculations) in the form and numbers stated in this Agreement. Without waiver of or prejudice to any rights of Buyer, Developer shall bear all risk in relation to its performance of work arising from or in relation to all documents or information (including calculations).

14.2 Buyer Design Review.

(a) Developer will ensure that the EPC Contract provides Buyer, Buyer's Representative, and Buyer's Engineer (the "Buyer Design Review Parties") with commercially reasonable review rights, in respect of certain design drawings, specifications, and similar documents which shall set forth in detail the requirements for the construction of the Project, including the right to review [(i) thirty percent (30%) systems designs, (ii) sixty percent (60%) systems designs, (iii) ninety percent (90%) systems designs], and (iv) issued for construction designs ("Design Documents"). The Design Documents shall incorporate engineering and design specifications for the Project for an installed capacity equal to the Planned Capacity.

(b) The Buyer Design Review Parties will have fifteen (15) Business Days from receipt of the Design Documents to provide comments. Such comments will address conformance of such Design Documents to the Technical Specification and the Transaction Documents.

(c) If the Buyer Design Review Parties timely provide comments on any Design Documents, Developer Parties must resubmit revised Design Documents that are responsive to such comments. The Buyer Design Review Parties will then have ten (10) Business Days from receipt of the resubmission to provide any additional comments. The Developer Parties may only proceed with the Work once the Buyer Design Review Parties either approve of the Design Documents without comment or offer written consent that the comments do not have to be incorporated into the Design Documents.

(d) A delay or lack of comments from the Buyer Design Review Parties will not relieve the Developer from meeting its obligations under the Transaction Documents or the Contractor from meeting its obligations in the EPC Contract, and Buyer reserves the right to allow the work to proceed "under protest."

14.3 Documents not in accordance with Agreement.

Any documents or information (including calculations) which Buyer's Representative identifies as not in compliance with this Agreement shall be modified to be in compliance and resubmitted without delay.

14.4 Drawings Submitted.

Developer shall not deviate from drawings accepted or approved by Buyer or Buyer's Representative or issued by Developer as approved for construction, except with the prior written consent of Buyer or Buyer's Representative.

14.5 Inspection of Drawings.

Developer shall maintain and provide to Buyer's Representative from time to time or upon request of Buyer's Representative a complete list of drawings, identifying which are approved for construction. Buyer and Buyer's Representatives shall have the right at all reasonable times to inspect all drawings of any part of the Work.

14.6 Operating and Maintenance Instructions.

(a) All operating and maintenance manuals, startup and shutdown manuals, and drawings of the Work as-built shall be in such detail as will enable Buyer to operate, maintain, and repair all parts of the Work, as described in Appendix F and Appendix G.

(b) The provision by Developer of the final operation and maintenance manuals and drawings of the Work as-built in accordance with the provisions of this 14.6 shall be identified as a Milestone in Appendix B and the provisions of ARTICLE 11 shall apply.

14.7 Buyer's Use of Drawings.

(a) Drawings and information created by Developer Parties for purposes of designing, developing, constructing, commissioning, and operating the Project constitute "work made for hire," and Developer hereby transfers and assigns all rights in and to such drawings and information to Buyer. The EPC Contract shall similarly require that Contractor so transfer and assign all rights in and to such drawings and information.

(b) Drawings and information supplied by Developer Parties that are not created by Developer specifically for or in connection with the Project, but that are necessary or useful for the operation and maintenance of the Project, the Work, or any portion of thereof, may be used by Buyer for the purposes of completing, maintaining, operating, improving, adapting, renewing, enlarging, dismantling, re-assembly, adjusting, and repairing the Work, and for any other legal purpose, pursuant to the license granted in 14.7(c).

(c) Developer grants to Buyer an irrevocable, perpetual, royalty free license to use all drawings and information for the foregoing purposes and Developer shall provide Buyer with copies of such drawings and information.

14.8 Errors in Drawings Supplied by Developer.

(a) Developer shall be responsible for the accuracy, completeness, and suitability of all drawings, samples, patterns, models, calculations, or information submitted by Developer Parties in connection with the Work. Notwithstanding Buyer's or Buyer's Representative's inspection or approval of drawings, samples, patterns, models, calculations, or information submitted by Developer Parties, Developer shall not be relieved of any responsibility or liability imposed on it by any provisions of this Agreement and shall be responsible for any errors, omissions, or discrepancies therein.

(b) Developer shall bear any and all third-party costs Developer or Buyer may incur as a result of delay in providing such drawings, samples, patterns, models, calculations, or information or as a result of material errors, omissions, or discrepancies therein or for the correction thereof.

(c) Developer shall, at its sole cost and expense, carry out or cause to be carried out any alterations or remedial work necessitated by such errors, omissions, or discrepancies for which it is responsible and modify the drawings, samples, patterns, models, calculations, or information accordingly.

ARTICLE 15
PERFORMANCE TESTS

15.1 Performance Guarantees.

(a) Prior to Substantial Completion, Developer shall conduct or cause to be conducted the Performance Guarantee Tests (with the exception of the Availability Test, which is addressed in (b), below) as soon as practicable in accordance with the Technical Specification, the procedures and protocols of Appendix O and the other tests, procedures, and protocols as may be developed by the Parties pursuant hereto. At least 60 days prior to each Performance Guarantee Test, Developer shall deliver to Buyer a supplement to Appendix O further outlining in detail the tests, procedures and protocols to be followed in conducting the Performance Guarantee Tests. Such supplement shall include, at a minimum, provisions addressing: (a) testing procedures for each item of Major Equipment; and (b) any other activities that, in accordance with Prudent Industry Practices, should be included. Thereafter, the Parties shall promptly agree on modifications to such supplement so that Appendix O, as supplemented, is satisfactory Buyer.

(b) Prior to Final Completion, Developer shall perform the Availability Test and related obligations and provide the Availability Guarantee, as provided in Appendix O; provided, if Developer does not achieve the Availability Guarantee as determined in accordance with the terms of Appendix O on or before the Final Completion Date, then Developer shall pay as liquidated damages for such failure and not as a penalty, the Guaranteed Availability Liquidated Damages for each Day during the Reliability Run Period in which Developer fails to demonstrate compliance with the Availability Guarantee.

15.2 Cost and Direction.

(a) Buyer will cooperate with Developer's reasonable requests in connection with each Performance Guarantee Test but shall not be required to provide any materials, electricity, fuel, water, or stores in connection therewith.

(b) Developer shall provide all materials, charging electricity, consumables, and stores, and all personnel necessary to supervise startup and the conducting of the Performance Guarantee Tests and shall provide all necessary technical assistance and advice in connection with the Performance Guarantee Tests. Except as approved by Buyer in writing, Developer shall not use personnel in excess of the normal contingent of Project operations staff to operate the Project during the Performance Guarantee Tests. During training and conducting the Performance Guarantee Tests, Buyer's operating personnel shall be working under the technical direction and instruction of Developer and Developer shall be responsible for the accuracy of its instructions/directions provided to Buyer's operating personnel.

15.3 Buyer's Right to Validate.

Buyer and Buyer's Representative shall have the right and opportunity to be present and observe the Performance Guarantee Tests and shall have the right and opportunity in advance or during the Performance Guarantee Tests to inspect and validate all meters, meter readings, and other pertinent data necessary to verify the results of the Performance Guarantee Tests. Buyer shall provide reasonable notice to Developer of any such observation and inspection, including the specific information desired and method of obtaining such information. Developer and Buyer shall coordinate such observation, inspection, and validation so as not to interfere with the Performance Guarantee Tests and provide for a verifiable result.

15.4 Timing.

Developer shall provide Buyer at least [ninety (90)] days' prior written notice of the anticipated date on which the Performance Guarantee Tests will begin and at least five (5) days' prior notice of the actual date (or any change to the actual date) on which the Performance Guarantee Tests will begin.

15.5 Test Reports.

(a) Developer shall Make Available to Buyer a preliminary test report, including the test data sheets and calculated results for each Performance Test (the "Preliminary Performance Test Report"), promptly after completion of each Performance Guarantee Test, together with a notice to Buyer certifying completion of the applicable Performance Test in accordance with this Agreement and the results of each such Performance Guarantee Test. Promptly after receipt of such Preliminary Performance Test Report, Buyer and Developer shall consult concerning the results of each such Performance Guarantee Test, and within three (3) days thereafter, Buyer shall provide Developer written notice that it either accepts or disputes the results of the applicable Performance Guarantee Test, including the reasons for any dispute.

(b) Within fifteen (15) Business Days following completion of an applicable Performance Guarantee Test, Developer shall provide to Buyer a final test report, including test data sheets and calculated results of each Performance Test (the "Final Performance Test Report") and a final notice to Buyer certifying completion of the Performance Guarantee Test. Each Final Performance Test Report shall reflect the Parties' consultation with one another with respect to the Preliminary Performance Test Report. Within fifteen (15) days of receipt of such documentation from Developer, Buyer shall provide Developer written notice that it either accepts or disputes the results of the applicable Performance Guarantee Test, including the reasons for any dispute. If Buyer disputes the results of the Performance Guarantee Test in the Final Performance Test Report, then Developer shall re-perform the applicable Performance Test (or part thereof) in accordance with the procedures set forth in Appendix O. If the results of the re-test confirm the accuracy of the initial Performance Guarantee Test, then Buyer shall pay the increased costs directly resulting from the re-test. If the results of the re-test do not confirm the accuracy of the initial Performance Guarantee Test, then Developer shall pay the increased costs directly resulting from the re-test.

15.6 Failure on Tests or Inspection.

Following any failed Performance Guarantee Test, Developer shall replace or repair the applicable Work, Project, Equipment or Materials and re-submit the same for test or inspection in accordance with this ARTICLE 15. All expenses reasonably incurred by or on behalf of Buyer in connection with such re-testing or inspection shall paid for by Developer. Buyer's rights pursuant to this 15.6 are in addition to its rights pursuant to ARTICLE 15.

15.7 Duty to Advise of Defects, Errors, and Omissions.

Developer shall promptly advise Buyer upon it becoming aware of any Defect in any Work performed or Equipment, Materials or the Project supplied or used by Developer Parties or error or omission that might affect the Work, the Equipment, the Materials, or the Project and its operability, operational life, or maintenance.

ARTICLE 16
EPC MILESTONES AND TRANSFER OF CARE, CUSTODY AND CONTROL

16.1 EPC Milestones in the EPC Contract.

Developer shall cause the EPC Contract to have the following final EPC Milestones: (i) Mechanical Completion; (ii) Substantial Completion; and (iii) Final Completion.

16.2 Notice of Mechanical Completion.

(a) Developer shall provide Buyer and Buyer's Engineer with no less than ten (10) Business Days' notice prior to its expected delivery of the Certificate of Mechanical Completion. When Developer determines that the Work meets the Mechanical Completion Criteria set forth in Appendix Q, Developer shall so notify Buyer and Buyer's Engineer and provide Buyer and Buyer's Engineer a certificate of an Authorized Signatory of Developer, in the form of Appendix D-1, certifying that the Mechanical Completion Criteria have been achieved and the date thereof (the "Certificate of Mechanical Completion").

(b) Within five (5) Business Days after receipt of each Certificate of Mechanical Completion, Buyer's Engineer shall provide written notice to Developer and Buyer of either: (i) its rejection of such Certificate of Mechanical Completion (if reasonable cause exists for doing so) or (ii) its acceptance of the Certificate of Mechanical Completion. Within five (5) Business Days after receipt of notice from Buyer's Engineer in the preceding sentence, Buyer shall either: (i) if reasonable cause exists for doing so (including but not limited to a rejection by Buyer's Engineer), reject such Certificate of Mechanical Completion and by written notice specify the Mechanical Completion Criteria Developer failed to achieve; or (ii) accept the Certificate of Mechanical Completion by countersigning the Certificate of Mechanical Completion, in which case, Mechanical Completion shall be deemed to occur on the date set forth in the Certificate of Mechanical Completion. Any failure of Buyer to respond within such five (5)-Business Day period may serve as the basis of a Required Change Order, in accordance with 12.2(c)(ii).

(c) If Buyer rejects a Certificate of Mechanical Completion pursuant to 16.2(b)(i), then Developer shall promptly provide to Buyer a plan and schedule for remedying the deficiencies specified in Buyer's written notice, and shall carry out such plan at its own cost and expense. Upon completion of such remedial work and Developer's belief that the Mechanical Completion Criteria are satisfied, Developer shall issue a new Certificate of Mechanical Completion to Buyer pursuant to 16.2(a).

(d) The foregoing procedure shall be repeated until Buyer accepts the Certificate of Mechanical Completion pursuant to 16.2(b)(ii). Disputes as to whether Developer has achieved Mechanical Completion shall be resolved pursuant to ARTICLE 27.

(e) In no event shall Mechanical Completion be achieved if the installed storage capacity is less than the Planned Storage Capacity.

16.3 Notice of Substantial Completion.

(a) Developer shall provide Buyer and Buyer's Engineer with no less than ten (10) Business Days' notice prior to its expected delivery of the Certificate of Substantial Completion. When Developer determines that the Work meets the Substantial Completion Criteria set forth in Appendix Q, Developer shall so notify Buyer and Buyer's Engineer and provide Buyer and Buyer's Engineer a certificate of an Authorized Signatory of Developer, in the form of Appendix D-2, certifying that the Substantial Completion Criteria have been achieved and the date thereof (the "Certificate of Substantial Completion").

(b) Within five (5) Business Days after receipt of each Certificate of Substantial Completion, Buyer's Engineer shall provide written notice to Developer and Buyer of either: (i) its rejection of such Certificate of Substantial Completion (if reasonable cause exists for doing so) or (ii) its acceptance of the Certificate of Substantial Completion. Within five (5) Business Days after receipt of notice from Buyer's Engineer in the preceding sentence, Buyer shall either: (i) if reasonable cause exists for doing so (including but not limited to a rejection by Buyer's Engineer), reject such Certificate of Substantial Completion and by written notice specify the Substantial Completion Criteria Developer failed to achieve; or (ii) accept the Certificate of Substantial Completion by countersigning the Certificate of Substantial Completion, in which case, Substantial Completion shall be deemed to occur on the date set forth in the Certificate of Substantial Completion. Any failure of Buyer to respond within such five (5)-Business Day period may serve as the basis of a Required Change Order, in accordance with 12.2(c)(ii).

(c) If Buyer rejects a Certificate of Substantial Completion pursuant to 16.3(b)(i), then Developer shall promptly provide to Buyer a plan and schedule for remedying the deficiencies specified in Buyer's written notice, and shall carry out such plan at its own cost and expense. Upon completion of such remedial work and Developer's belief that the Substantial Completion Criteria are satisfied, Developer shall issue a new Certificate of Substantial Completion to Buyer pursuant to 16.2(a).

(d) The foregoing procedure shall be repeated until Buyer accepts the Certificate of Substantial Completion pursuant to 16.2(b)(ii). Disputes as to whether Developer has achieved Substantial Completion shall be resolved pursuant to ARTICLE 27.

(e) In no event shall Substantial Completion be achieved if the Planned Capacity, as set forth in the Technical Specification, is less than the Capacity Guarantee.

16.4 Notice of Final Completion.

(a) Developer shall provide Buyer and Buyer's Engineer with no less than ten (10) Business Days' notice prior to its expected delivery of the Certificate of Final Completion. When Developer determines that the Work meets the Final Completion Criteria set forth in Appendix Q, Developer shall so notify Buyer and Buyer's Engineer and provide Buyer and Buyer's Engineer a certificate of an Authorized Signatory of Developer, in the form of Appendix D-3, certifying that the Final Completion Criteria have been achieved and the date thereof (the "Certificate of Final Completion").

(b) Within five (5) Business Days after receipt of each Certificate of Final Completion, Buyer's Engineer shall provide written notice to Developer and Buyer of either: (i) its rejection of such Certificate of Final Completion (if reasonable cause exists for doing so) or (ii) its acceptance of the Certificate of Final Completion. Within five (5) Business Days after receipt of notice from Buyer's Engineer in the preceding sentence, Buyer shall either: (i) if reasonable cause exists for doing so

(including but not limited to a rejection by Buyer's Engineer), reject such Certificate of Final Completion and by written notice specify the Final Completion Criteria Developer failed to achieve; or (ii) accept the Certificate of Final Completion by countersigning the Certificate of Final Completion, in which case, Final Completion shall be deemed to occur on the date set forth in the Certificate of Final Completion. Any failure of Buyer to respond within such five (5)-Business Day period may serve as the basis of a Required Change Order, in accordance with 12.2(c)(ii).

(c) If Buyer rejects a Certificate of Final Completion pursuant to 16.4(b)(i), then Developer shall promptly provide to Buyer a plan and schedule for remedying the deficiencies specified in Buyer's written notice, and shall carry out such plan at its own cost and expense. Upon completion of such remedial work and Developer's belief that the Final Completion Criteria are satisfied, Developer shall issue a new Certificate of Final Completion to Buyer pursuant to 16.2(a).

(d) The foregoing procedure shall be repeated until Buyer accepts the Certificate of Final Completion pursuant to 16.2(b)(ii). Disputes as to whether Developer has achieved Final Completion shall be resolved pursuant to ARTICLE 27.

(e) In no event shall Final Completion be achieved if any Performance Guarantee Test demonstrates that a Performance Guarantee is not met.

16.5 Risk of Loss; Care, Custody and Control; Punch List Items.

(a) Developer shall cause the EPC Contract to provide that risk of loss with respect to the Work, including all Equipment, Materials, and the Project, shall pass to the Project Company prior to the Substantial Completion Date.

(b) Developer shall be responsible for risk of loss of the Work, including all Equipment, Materials, and the Project, and shall make good at Developer's own cost and expense any loss or damage that may occur to the Work or any part thereof from any cause whatsoever on or before the Substantial Completion Date.

(c) Care, custody, and control of the Work, including all Equipment, Materials, and the Project, shall be transferred to the Project Company prior to the Substantial Completion Date. Buyer shall begin to compile a preliminary punch list as the Work progresses (with Developer and Buyer, with the advisement of Buyer's Engineer and in good faith, mutually determining the Dollar value of such list). Buyer shall submit to Developer the completed preliminary punch list at least fifteen (15) Business Days prior to the anticipated Substantial Completion Date. At least five (5) Business Days prior to the Substantial Completion Date, Developer and Buyer, with the advisement of Buyer's Engineer, shall mutually agree on the final punch list of items, the value related thereto and on a schedule for completion of such items (the "Final Punch List"). All of the items on the Final Punch List shall be completed expeditiously after the Substantial Completion Date and in accordance with the schedule for completion provided as part of the Final Punch List. Buyer shall provide to Developer for such purpose reasonable access to the Work. Developer's Credit Support shall remain in place until all items on the Final Punch List have been completed or otherwise waived by Buyer.

(d) Buyer shall begin to compile a preliminary punch list as the Work progresses (with Developer and Buyer, with the advisement of Buyer's Engineer and in good faith, mutually determining the Dollar value of such list). The list of punch list items with respect to Work not completed as of the Substantial Completion and the applicable Punch List Holdback Amount with respect thereto, shall be certified by Buyer's Engineer. Upon the Final Completion, Buyer shall pay to Developer the Punch List Holdback Amount.

16.6 Dispatch Coordination.

During the startup, testing, and commissioning of the Project, Developer shall coordinate with Buyer's Representative and Buyer's operating personnel for the orderly startup and shut-down of the Project. Sixty (60) days prior to the initial startup of the Project, Developer shall provide to Buyer a schedule of dispatch for the Project during the commissioning period, including expected net Project output and duration of the commissioning activities. Developer shall also provide seventy-two (72) hours' advance notice to Buyer of the planned dispatch profile including net Project output and duration of the commissioning period.

16.7 Removal of Equipment.

(a) Prior to Final Completion, Developer shall remove from the Site all Developer's Equipment, materials, temporary structures constructed by or on behalf of Developer or other items of any nature required for execution or completion of the Work, but excluding equipment, materials, appliances, or other items intended to form or forming part of the Work, including the Equipment, Materials, and the Project.

ARTICLE 17
TAX MATTERS

17.1 Tax Indemnification.

Developer shall defend, indemnify, and hold harmless the Buyer Indemnified Parties from, for, and against any Pre-Closing Taxes.

17.2 Transfer Tax.

Developer shall be responsible for any sales, use, value added, gross receipts, excise, registration, stamp duty, transfer, or other similar Taxes or governmental fees (including any interest or penalties related thereto) that may be payable in connection with the development, design, engineering, construction, and commissioning of the Project and the Work and Buyer's purchase of the Membership Interests in the Project Company (the "Transfer Tax"). Developer shall prepare and file all Tax Returns for any Transfer Tax and shall remit the Transfer Tax shown as due on each such Tax Return. Buyer and Developer shall, upon request, use their commercially reasonable efforts to obtain any certificate or other document from any Governmental Authority or any other person that may be necessary to mitigate, reduce, or eliminate any Tax described in this 17.2.

17.3 Purchase Price Allocation.

The Parties acknowledge and agree that, for federal income Tax purposes (and state, local, and foreign income Tax purposes, as applicable), the sale of the Membership Interests is properly treated as a sale to Buyer of all of the assets of the Project Company and an assumption by Buyer of all of the liabilities of the Project Company. Within ninety (90) days after the Closing Date, Buyer shall prepare and provide to Developer an allocation of the Purchase Price and any liabilities properly included for U.S. federal income Tax purposes among the assets of the Project (the "Proposed Purchase Price Allocation"). Within thirty (30) days of receipt of such Proposed Purchase Price Allocation, Developer shall provide to Buyer any comments with respect to such Proposed Purchase Price Allocation, and Buyer and Developer will thereafter work together in good faith to resolve any disagreement with respect to such Proposed Purchase Price Allocation to agree on a final Purchase Price allocation (the "Final Purchase Price Allocation"). Buyer and Developer shall file all Tax Returns in a manner consistent with the Final Purchase Price Allocation and shall not take any position on any Tax Return, in any audit, administrative, or judicial proceeding, or otherwise that is inconsistent

with the Final Purchase Price Allocation except as otherwise required applicable Law; provided, however, that if Developer and Buyer are unable to resolve any disagreements with respect to the Proposed Purchase Price Allocation within thirty (30) days after Buyer's receipt of Developer comments (if any) to the Proposed Purchase Price Allocation (or such longer period as may be agreed upon in writing by Developer and Buyer), the Developer and the Buyer may take inconsistent Tax reporting positions with respect to the allocation of purchase price hereunder.

17.4 Tax Benefits.

(a) Neither Developer nor any Affiliate of Developer will engage in any action or fail to take any action that would be reasonably likely to jeopardize the realization by or allowance to Buyer or any of its Affiliates of any Tax Benefits or the eligibility of the Project (or any property that is part of the Project) for any other Tax benefit.

(b) Neither Developer nor any Affiliate of Developer will take any action that would, or omit to take any action the omission of which would, cause the construction of the Project to have begun on or after [___] within the meaning of Sections 48(a)(2)(A)(i)(II), 48(a)(3)(A)(i) and 48(a)(6) of the Code and the IRS Notice or otherwise cause to be untrue, incorrect or incomplete any certification contained in the Begun Construction Certificate. Developer will notify Buyer in writing within ten (10) days of Developer or any of its Affiliates becoming aware of any Safe Harbor Controversy

(c) Developer shall cause the Project to be placed in service within the meaning of Sections 48 and 168 of the Code and the IRS Notice no later than [___].[17]

17.5 Tax Returns.

(a) Developer shall prepare and duly and timely file all Tax Returns required to be filed by or with respect to the Project Company, the Project Assets and the Project for any taxable period ending on or before the Closing Date, and such Tax Returns shall be prepared in accordance with applicable Laws and this Agreement. Developer shall provide Buyer with copies of all such Tax Returns (except, for the avoidance of doubt, federal and applicable state income Tax Returns of Developer) at least fifteen (15) Business Days prior to the due date of such return (taking into account any valid extensions thereof) for Buyer's review and comment, and Developer shall take into account any of Buyer's reasonable comments that are requested at least five (5) Business Days in advance of the due date (taking into account any valid extensions thereof).

(b) Buyer shall prepare and duly and timely file all Tax Returns required to be filed by or with respect to the Project Company, the Project Assets, and the Project with respect to any Straddle Period, and such Tax Returns shall be prepared in accordance with applicable Laws and this Agreement. Buyer shall provide Developer with copies of all such Tax Returns (except, for the avoidance of doubt, federal and applicable state income Tax Returns of Buyer) at least fifteen (15) Business Days prior to the due date of such return (taking into account any valid extensions thereof) for Buyer's review and comment, and Buyer shall consider in good faith any of Developer's comments that are requested reasonably at least five (5) Business Days in advance of the due date (taking into account any valid extensions thereof). Developer shall remit Developer's allocable share of any Taxes due by or with respect to the Project Company, the Project Assets or the Project in respect of any Straddle Period to Buyer within five (5) days of Buyer's request therefor, except to the extent such Taxes were taken into account in the Purchase Price as Pro-ratable Items.

[17] Note to Bidders: Applicable to storage projects co-located with solar.

(c) All real and personal property Taxes that are due or become due with respect to the assets and properties of the Project Company, the Project Assets or the Project for any Straddle Period shall be apportioned between Developer, on the one hand, and Buyer, on the other hand, as of the Closing Date, based on the ratio of the number of days in the Straddle Period through (and including) the Closing Date, on the one hand, to the number of days in the Straddle Period after the Closing Date, on the other hand. Subject to the foregoing sentence, with respect to any Straddle Period, the amount of Taxes allocable to the portions thereof ending on (and including) the Closing Date and beginning on the day after the Closing Date shall be determined using an interim closing of the books method as of the close of business on the Closing Date.

(d) Neither Buyer nor the Project Company may file an amended Tax Return with respect to any Pre-Closing Tax Period or Straddle Period without the written consent of Developer, which shall not be unreasonably withheld, conditioned, or delayed. Any refund of Tax with respect to any Pre-Closing Tax Period relating to the Project Company, the Project Assets and the Project shall be the property of Developer, and any refund of any Tax with respect to any Straddle Period relating to the Project Company, the Project Assets and the Project shall be apportioned between Buyer and Developer in the manner set forth in 17.5(b) hereof.

17.6 Tax Contests.

Buyer shall notify Developer upon receipt by Buyer, the Project Company, or any of Buyer's other Affiliates of a written notice of a U.S. federal or state Tax audit or assessments that may materially affect the Tax liabilities of the Project Company, and for which Developer is or may be liable hereunder, as soon as reasonably practicable after receiving such notice but in any event within fifteen (15) days of such receipt, provided that failure to comply with this provision shall not affect Buyer's right to indemnification hereunder, except to the extent such failure actually and materially prejudices Developer. Developer shall have the sole right to control any audit, action, claim, assessment, examination, levy, deficiency, adjustment, or other judicial or administrative proceeding by any Governmental Authority, and contest, resolve, and defend against any assessment for additional Taxes, notice of Tax deficiency or other adjustment of Taxes of or relating solely to one or more of the Project Company, the Project Assets, or the Project and solely with respect to a Pre-Closing Tax Period; provided that (a) that Developer must first acknowledge its liability for any resulting Taxes in writing, (b) Developer shall provide written notice to Buyer of any such proceeding and keep Buyer reasonably apprised of the initiation and status of any such proceeding, (c) Buyer shall have the right, at its own expense, to review and comment on any written submissions and to participate in any proceedings relating to any such proceeding controlled by Developer, (d) Developer shall not settle any such proceeding without Buyer's written consent, which shall not be unreasonably withheld, conditioned, or delayed, and (e) Developer shall have no right control or contest any audit, action, claim, assessment, examination, levy, deficiency, adjustment, or other judicial or administrative proceeding with respect to Taxes reported on any consolidated, combined, unitary or similar Tax Return for which Buyer is a member. Buyer shall have the sole right to control any audit, action, claim, assessment, examination, levy, deficiency, adjustment, or other judicial or administrative proceeding by any Governmental Authority, and contest, resolve, and defend against any assessment for additional Taxes, notice of Tax deficiency or other adjustment of Taxes of or relating to the Project Company, the Project Assets, or the Project for all other taxable periods; provided, that with respect to any administrative or court proceeding relating to any Straddle Period, (i) Developer shall have the right, at its own expense, to review and comment on any written submissions and to participate in any proceedings relating to any such proceeding controlled by Buyer, (ii) Buyer shall provide written notice to Developer of any such proceeding and keep Developer reasonably apprised of the initiation and status of any such proceeding, and (iii) Buyer

shall not settle any such proceeding without Developer's written consent, which shall not be unreasonably withheld, conditioned, or delayed.

17.7 Duties and Excises.

The Purchase Price includes any and all Taxes (including any related customs broker fees or similar charges) imposed on the sale or delivery of the Project Company, the Project Assets, the Work or the Project, and Developer shall duly and timely remit any such Taxes in accordance with all applicable Laws (including all customs and import duties arising upon the importation of the Project, Equipment, and Materials into the applicable port of entry). Developer shall provide Buyer such information and data as requested by Buyer, and fully cooperate, in connection with (i) the reporting of any such Taxes, (ii) any audit relating to any such Taxes, or (iii) any assessment, claim, or proceeding relating to any such Taxes.

17.8 Cooperation.

Buyer and Developer shall cooperate fully, as and to the extent reasonably requested, in connection with the filing of Tax Returns and any audit, litigation, or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon request) the provision of records and information that are reasonably relevant to the filing of such Tax Returns and any such audit, litigation, or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

17.9 Coordination with General Indemnification.

The provisions of this ARTICLE 17 shall govern the indemnification rights and obligations of Buyer, Developer, and their Affiliates with respect to Tax matters in the event of any conflict or overlap between the provisions of Article 22 and this ARTICLE 17, and, for the avoidance of doubt, any Claim arising under both ARTICLE 17 and ARTICLE 22 shall be treated for all purposes of the Agreement (including **Error! Reference source not found.** and ARTICLE 22) as arising solely under this ARTICLE 17.

ARTICLE 18
ENVIRONMENTAL MATTERS

18.1 General Obligations.

(a) Neither Developer nor Project Company shall (a) install or operate or permit its contractors or other representatives to install or operate any underground storage tanks on the Site, (b) disturb (other than through demolition and removal or other abatement) any asbestos contained in or that forms part of any building, building component, structure, or office space on the Site, and (c) use or store any polychlorinated biphenyls at the Site in connection with construction of the Project.

(b) Not less than ninety (90) days prior to the Closing, Developer shall prepare and submit to Buyer materials management and emergency response procedures in accordance with Environmental Law covering any Regulated Materials Developer expects to be used in the completion and testing of the Work, which procedures shall be reasonably satisfactory to Buyer. Unless Buyer provides written comments on the procedures within fourteen (14) days of receipt from Developer, Buyer shall be deemed to have approved the procedures. Developer shall materially comply, and shall cause all other Developer Parties to materially comply, at all times with the Buyer-approved materials management and emergency response procedures (the "Procedures"). No Regulated Materials shall be Released on the Site in violation of Environmental Laws.

18.2 Release On-Site.

Developer shall immediately notify Buyer of any Release of Regulated Materials at the Site by the Developer Parties or otherwise that violates or, to Developer's Knowledge, has the potential to violate Environmental Laws, including but not limited to state and federal laws and regulations relating to water pollution, hazardous material disposal, and hazardous materials Release requirements. In addition, Developer shall immediately notify any applicable Governmental Authorities of any Release that is reportable to Governmental Authorities under applicable Environmental Laws and take such emergency measures consistent with Prudent Industry Practice and necessary to comply with the Procedures and applicable Law, including with respect to the immediate containment of any such Release and Remediation of the affected area.

18.3 Release Off-Site.

In the event of a Release by any Developer Party of a Regulated Material off the Site but related to the Work which is reportable to Governmental Authorities under applicable Environmental Laws, Developer shall be responsible for notifying all applicable federal, state, and local Governmental Authorities in accordance with applicable Law or for causing such notification to occur by the Developer Party responsible for such action. Developer shall take all appropriate steps consistent with the Procedures and required by applicable Law for containment of any such Release and Remediation of the affected area.

18.4 Liability.

Developer shall be liable to Buyer for any Release of Regulated Materials at or from the Site to the extent such Release has occurred as of the Closing Date, except to the extent such Release is negligently or intentionally exacerbated by Buyer or any third party after the Closing Date.

18.5 Pre-existing Regulated Materials.

(a) Developer shall develop a contingency plan to address the investigation and, if required under Applicable Law, corrective action with respect to the presence or Release of Regulated Materials encountered in surface or subsurface soils, surface water, or groundwater during construction of the Project. The contingency plan shall, at a minimum, provide for:

(i) a staging area for soil containing Regulated Materials to avoid or minimize construction delays;

(ii) the handling of any groundwater containing Regulated Materials in accordance with applicable Permits and Environmental Laws; and

(iii) the off-site disposal of all Regulated Materials and impacted soil and groundwater that does not qualify under Environmental Law for return to or placement at the Site.

(b) Developer shall be responsible for implementing any requirements under Environmental Law relating to pre-existing Regulated Materials identified in any environmental surveys or reports.

18.6 Notice.

Developer shall notify Buyer as soon as reasonably practicable of the occurrence of any event that would reasonably be expected to result in any actual or potential violation of or noncompliance with any Environmental Law relating to the Work, the Project, or the Site, or otherwise constitutes a Material Adverse Change under this Agreement.

ARTICLE 19
WARRANTIES OF WORK

19.1 Warranties.

(a) Developer shall cause the EPC Contract to provide a warranty (the "Warranty"), for the duration of the applicable Warranty Period, as set forth in this ARTICLE 19. The scope of the Warranty shall include:

(i) that the Project and all Equipment and Materials and other Work furnished by Contractor or any Major Subcontractor, including installation, but excluding the Major Equipment to which the Major Equipment Warranties in Appendix E apply (provided, that Work related to such Equipment shall not be excluded) shall: (A) be free from improper workmanship and defects in design, engineering, construction, fabrication, workmanship, materials, and operations (collectively, "Defects," and individually "Defect"), (B) be new and unused (except for use as part of the Project), (C) be of good quality, undamaged, and in good condition, and (D) conform to the applicable requirements of this Agreement and the other Transaction Documents, including the Scope of Work and Technical Specification, in each case, in effect as the Final Completion Date;

(ii) that the procurement, design, engineering, and construction services included as part of the Work (including for the avoidance of doubt, Work related to installation of the Equipment) shall be performed with Contractor's and Major Subcontractor's best skill and judgment, in a good and workmanlike manner, and conform to and be designed, engineered, and constructed in accordance with the terms and conditions of the Transaction Documents, including the Scope of Work and Technical Specification, Prudent Industry Practice, applicable Laws, and the Project Company Permits, in each case, in effect as of the Final Completion Date, and conform with, and be designed and engineered according to professional standards and skill, expertise and diligence of design professionals regularly involved in energy storage projects similar to the Project, and contain the Equipment, Materials, and supplies described in the Scope of Work;

(iii) that the completed Work shall perform its intended functions as a complete, integrated energy storage system as explicitly described or implied in the Transaction Documents; and

(iv) that none of the Work, the Project, the Equipment, the Materials, the final plans, and the design, engineering, and other services rendered by Contractor or any Major Subcontractor hereunder, nor the use or ownership thereof by Project Company or Buyer in accordance with the licenses granted hereunder, infringes, violates, or constitutes a misappropriation of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights, or trademarks.

(b) The Warranty shall not extend to Defects or deficiencies to the extent resulting from: (i) operation by Buyer's personnel in a manner inconsistent with or contrary to instructions contained in the operation and maintenance manuals provided by Developer pursuant to 14.6; (ii) repairs or alterations by Buyer's personnel in a manner inconsistent with or contrary to instructions provided by Developer or as contained in the operation and maintenance manuals provided by Developer pursuant to 14.6; or (iii) normal wear and tear.

(c) Developer shall provide a gap warranty (the "Gap Warranty"), for the duration of the applicable Warranty Period, as set forth in this ARTICLE 19. The scope of the Gap Warranty shall include:

(i) that the Project and all Equipment and Materials and other Work furnished by Developer, including installation, but excluding the Major Equipment to which the Major Equipment Warranties in Appendix E apply (provided, that Work related to such Equipment shall not be excluded) shall: (A) be free from improper workmanship and Defects, (B) be new and unused (except for the beginning of construction transformer, which began production in [____]), (C) be of good quality, undamaged, and in good condition, and (D) conform to the applicable requirements of this Agreement and the other Transaction Documents, including the Scope of Work and Technical Specification, in each case, in effect as the Final Completion Date;

(ii) that the procurement, design, engineering, and construction services performed by Developer as part of the Work (including for the avoidance of doubt, Work related to installation of the Equipment) shall be performed with Developer's best skill and judgment, in a good and workmanlike manner, and conform to and be designed, engineered, and constructed in accordance with the terms and conditions of the Transaction Documents, including the Scope of Work, and Technical Specification, Prudent Industry Practice, applicable Laws, and the Project Company Permits, in each case, in effect as of the Final Completion Date, and conform with, and be designed and engineered according to professional standards and skill, expertise, and diligence of design professionals regularly involved in energy storage projects similar to the Project, and contain the Equipment, Materials, and supplies described in the Scope of Work;

(iii) that the Work completed by Developer shall perform its intended functions as a complete, integrated energy storage system as explicitly described or implied in the Transaction Documents; and

(iv) that none of the Work, the Project, the Equipment, the Materials, the final plans and the design, engineering, and other services rendered by Developer hereunder, nor the use or ownership thereof by Project Company or Buyer in accordance with the licenses granted hereunder, infringes, violates, or constitutes a misappropriation of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights, or trademarks.

19.2 Warranty Period.

Subject to the provisions in this ARTICLE 19, the Warranty and Gap Warranty and shall remain in full force and effect for a period beginning on the Final Completion Date and ending on the date that is thirty-six (36) months thereafter ("Warranty Period"); provided, however, that if a Serial Defect occurs within the Warranty Period, then the Warranty or Gap Warranty, as applicable, for such components of that type or the components that were the subject of the successful claim, respectively, shall be automatically extended for an additional one (1) year from the date of Buyer became aware of the failure that caused the Serial Defect.

19.3 Repair of Defects.

If Buyer or Developer discovers that the Work, or any portion thereof, fails to meet the Warranty or the Gap Warranty, then it shall notify the other Party of such failure within a reasonable time after discovery, along with the reasonable basis therefore. Buyer shall immediately relay any notice of Defect to Contractor or Developer upon Buyer's discovery of the Defect or Developer's notice of the Defect to Buyer. Upon receipt of such notice, Contractor (with respect to the Warranty) or Developer (with respect to the Gap Warranty), as applicable, shall (a) cure such failure in accordance with the Warranty or Gap Warranty, as applicable and (b) perform such tests as Buyer may reasonably require demonstrating the cure of such failure. Contractor and Developer shall coordinate repairing, replacing, or re-performing any of the Work with Project Company and Buyer so as to minimize any adverse effects on the operation of the Project.

19.4 Warranty Period Extension.

(a) Extension for Corrected Work. Any Work re-performed and any part of the Site that is reworked, repaired, or replaced in satisfaction of Contractor's obligations in connection with the Warranty or Gap Warranty will be re-warranted by Contractor or Developer, pursuant to the same Warranty or Gap Warranty, as applicable, as set forth in this ARTICLE 19, and Contractor and Developer will have the same obligations in relation thereto as set forth in this ARTICLE 19 for a period ending either (i) twelve (12) months from the date such re-performance, rework, repair or replacement is completed or (ii) as of the end of the applicable warranty period, whichever is later.

(b) Extension for Total Shutdown. If, during the Warranty Period, the Project is shut down (other than for the purpose of scheduled or routine maintenance) and such shutdown is caused by a defect or failure covered by the Warranty or Gap Warranty, then the Warranty Period will be extended by a period equal to the duration of the shutdown required to repair such defect or failure.

19.5 Subcontractor Warranties.

Developer will procure from each Major Subcontractor the Major Equipment Warranties set forth in Appendix E. Any Major Equipment Warranties still in effect at the expiration of the Warranty Period, to the extent assignable, will be assigned to Buyer or, if applicable, Project Company.

19.6 Delay in Remedying Defects.

If any such Defect or damage is not remedied by Contractor or Developer within a reasonable time or requires prompt remediation as a result of an emergency situation existing at the Site, then Buyer may proceed to do the Work or have others perform such Work at Contractor's or Developer's risk and expense provided that it does so in a reasonable manner and notifies Developer and Contractor of Buyer's intention so to do. Developer reserves the right to investigate and determine the eligibility for such Work to classify as part of a warranty claim. All costs incurred by or on behalf of Buyer in connection with such Work shall be deducted from the Purchase Price or be paid by Developer to Buyer within thirty (30) days of Buyer's demand for such payment.

19.7 Serial Defects.

With respect to the Equipment, if a Serial Defect occurs during the Serial Defect Warranty Period, Developer shall:

(a) Prepare a root cause report for the component(s) subject to the Serial Defect and deliver such report to Buyer within ten (10) Business Days from discovery of or notice of a Serial Defect.

(b) If the root cause is determined to be a manufacturing Defect, prosecute and administer the applicable Major Equipment Warranty or other warranty with the manufacturer to ensure the repair, replacement, or otherwise correction of the Defect.

(c) If the root cause is determined to be a design defect, prosecute and administer the applicable Major Equipment Warranty or other with the manufacturer to ensure the manufacturer formulates a reasonable retrofit design that resolves the cause and effect of such component(s) and causes all affected components of the Project to be retrofitted with the new design as promptly as possible.

19.8 Assignment of Warranties.

Unless otherwise assigned to the Project Company in the Major Supply Agreements, Developer and each Subcontractor shall enter into a partial assignment agreement, in form and substance acceptable to Buyer, pursuant to which Developer and each Subcontractor shall assign to Buyer or Project Company all of Developer's rights with respect to the warranties provided by such Subcontractor on or before the Final Completion Date (including but not limited to such other existing Developer, Contractor, and Major Subcontractor warranties as may exist with respect to 19.5).

ARTICLE 20
LIQUIDATED DAMAGES

20.1 General.

(a) The Parties agree that it is difficult or impossible to determine with precision the amount of damages that would be incurred by Buyer as a result of Developer Party's failure to timely achieve Mechanical Completion and to timely achieve Substantial Completion by the Guaranteed Substantial Completion Date, or achieve the Planned Capacity, if applicable. Accordingly, the Parties expressly agree that if Developer fails to timely achieve Substantial Completion by the Guaranteed Substantial Completion Date, or achieve certain of the Performance Guarantees as described below, any sums which would be payable under this ARTICLE 20 because of such failures are liquidated damages and not a penalty, and are fair and reasonable and any such sums represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failures.

20.2 Delay Liquidated Damages.

(a) If the Project fails to achieve Mechanical Completion on or prior to _____, then Developer shall pay Buyer liquidated damages of [____] ($[_]) per day that the Project fails to achieve Mechanical Completion (the "Mechanical Completion Delay Liquidated Damages").

(b) If the Project fails to achieve Substantial Completion on or before [_____, 20__] (the "Guaranteed Substantial Completion Date"), Developer shall pay Buyer liquidated damages of two hundred dollars ([$200]) per MWh per day of Planned Capacity that has not achieved Substantial Completion, escalating to three hundred dollars ([$300]) per MWh per day beginning on [_____, 20__] ("Substantial Completion Delay Liquidated Damages") The Guaranteed Substantial Completion Date will be extended due to Buyer-Caused Delays and Force Majeure; provided, that no delays for Force Majeure will extend the Guaranteed Substantial Completion Date for the Project beyond [_____, 20__].

(c) In the event that the Project achieves Substantial Completion by the Guaranteed Substantial Completion Date, but Developer previously paid Mechanical Completion Delay Liquidated Damages, then Buyer shall reimburse to Developer all such Mechanical Completion Delay Liquidated Damages through an adjustment to the Purchase Price.

20.3 Performance Liquidated Damages.

(a) Notwithstanding the foregoing, Developer may declare that it has achieved Substantial Completion if the Project achieves less than the Planned Capacity in the Capacity Test, but in no case less than the Capacity Guarantee, by paying Buyer the Guaranteed Capacity Liquidated Damages. In the event that the Project's actual capacity achieved in the Capacity Test is less than the Capacity Guarantee, then Developer shall not be entitled to declare Substantial Completion and Developer shall, at Developer's sole cost and expense, promptly rectify any such deficiencies so that the capacity of the Project achieved in the Capacity Test at least meets or exceeds the Capacity

Guarantee (and to the extent, after such repairs, the capacity of the Project achieved in a subsequent Capacity Test is less than the Planned Storage Capacity but greater than the Guaranteed Capacity, pay Buyer the Guaranteed Capacity Liquidated Damages). As used herein, the "Guaranteed Capacity Liquidated Damages" shall be the greater of two hundred Dollars per MW ([$200/MW]), prorated for fractional MWs, below the Guaranteed Power Capacity, or two hundred Dollars per MWh ([$200/MWh]), prorated for fractional MWhs, below the Guaranteed Rated Energy Capacity, for each Day after the Guaranteed Substantial Completion Date in which Developer does not demonstrate compliance with the Capacity Guarantee.

(b) Developer may declare that it has achieved Substantial Completion if the Facility achieves less than the Planned Roundtrip Efficiency Rate in the Roundtrip Efficiency Test, but in no case less than the Roundtrip Efficiency Guarantee, by paying Buyer the Guaranteed Roundtrip Efficiency Liquidated Damages. In the event that the Project's actual efficiency achieved in the Roundtrip Efficiency Test is less than the Roundtrip Efficiency Guarantee, then Developer shall not be entitled to declare Substantial Completion and Developer shall, at Developer's sole cost and expense, promptly rectify any such deficiencies so that the efficiency of the Project achieved in the Roundtrip Efficiency Test at least meets or exceeds the Roundtrip Efficiency Guarantee (and to the extent, after such repairs, the efficiency of the Project achieved in a subsequent Roundtrip Efficiency Test is less than the Planned Roundtrip Efficiency Rate but greater than the Roundtrip Efficiency Guarantee, pay Buyer the Guaranteed Roundtrip Efficiency Liquidated Damages). As used herein, the "Guaranteed Roundtrip Efficiency Liquidated Damages" shall be product of (i) the percentage amount by which the efficiency achieved in the Roundtrip Efficiency Test is less than the Roundtrip Efficiency Guarantee and (ii) $[__] per MWh.

(c) Developer may declare that it has achieved Final Completion if the Project achieves less than the Planned Availability by paying Buyer the liquidated damages set forth in Appendix O, Section 2 (the "Guaranteed Availability Liquidated Damages"). In the event that the Availability, based on the Availability Test, is [____] ([_]%) less than the Availability Guarantee, then Developer shall not be entitled to declare Final Completion and Developer shall, at Developer's sole cost and expense, promptly rectify any such deficiencies so that the Availability Guarantee is achieved based on the results of one or more retests of the Availability Test.

(d) In no event shall Developer be required to pay liquidated damages in connection with the Performance Guarantees in excess of [____] ($[_]) (the "Performance Test Liquidated Damages Cap").

20.4 Offset of EPC Contract Liquidated Damages.

After the Closing, with respect to any failure by the Contractor to achieve Mechanical Completion (as defined in the EPC Contract) on or prior to the Guaranteed Mechanical Completion Date (as defined in the EPC Contract), Buyer shall cause the Project Company to seek Delay Liquidated Damages (as defined in the EPC Contract) from the Contractor to the maximum extent available under the EPC Contract. The amount of any Mechanical Completion Liquidated Damages payable by Developer under 20.2 shall be reduced dollar-for-dollar by the amount of any Delay Liquidated Damages (as defined in the EPC Contract) received by the Project Company from the Contractor under the EPC Contract.

20.5 Calculations and Payments of Liquidated Damages.

(a) All amounts payable as liquidated damages under this ARTICLE 20 shall be made by Developer to Buyer no later than ten (10) days after the final day of each month during which liquidated damages became payable. Buyer shall have the right to audit Developer's calculations of

all liquidated damages. Developer shall itemize such calculations and such calculations shall include such supporting documentation as Buyer may reasonably request and shall be in sufficient detail to permit Buyer to verify each calculation. Buyer shall notify Developer, as soon as reasonably possible, of any portion of the calculations with which Buyer disagrees.

(b) Liquidated damages shall bear interest at the Late Payment Rate, compounded daily from the date such amount was due, but not to exceed the maximum rate of interest permitted by applicable Law.

ARTICLE 21
LIMITATION OF LIABILITY

21.1 Duty to Mitigate.

Except for losses indemnified pursuant to ARTICLE 17, but subject to any right or remedy which the Party may have under or by virtue of this Agreement, the Party establishing or alleging a breach or default of this Agreement or a right to recover damages or to be indemnified in accordance with this Agreement shall be under a duty to take all commercially reasonable actions necessary to mitigate any loss which has occurred.

21.2 Limitation of Liability.

SUBJECT TO THE OBLIGATION OF DEVELOPER TO PAY LIQUIDATED DAMAGES TO BUYER UNDER THIS AGREEMENT AND OTHERWISE AS PROVIDED IN 2.11 AND 21.3, AND EXCEPT AS TO A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, NEITHER DEVELOPER NOR BUYER SHALL BE LIABLE TO THE OTHER BY WAY OF INDEMNITY OR BY REASON OF ANY BREACH OR DEFAULT OF THIS AGREEMENT OR ANY STATUTORY DUTY OR TORT (INCLUDING NEGLIGENCE BUT EXCLUDING ANY DAMAGES PAYABLE TO A THIRD PARTY CAUSED BY A TRESPASS OR NUISANCE FOR WHICH DEVELOPER IS RESPONSIBLE PURSUANT TO THIS AGREEMENT) FOR ANY INDIRECT OR CONSEQUENTIAL (INCLUDING LOST PROFITS, TO THE EXTENT SUCH DAMAGES ARE INDIRECT), MULTIPLE, PUNITIVE, OR EXEMPLARY DAMAGES THAT MAY BE SUFFERED BY THE OTHER; PROVIDED, THAT LOSSES OR DAMAGES ATTRIBUTABLE TO, RESULTING FROM OR ARISING IN CONNECTION WITH THE LOSS, DISALLOWANCE, REDUCTION OR RECAPTURE OF, OR INABILITY TO CLAIM, TAX BENEFITS SHALL NOT CONSTITUTE SPECIAL, INDIRECT, CONSEQUENTIAL, MULTIPLE, PUNITIVE, OR EXEMPLARY DAMAGES FOR PURPOSES OF THIS AGREEMENT.

21.3 Enforceability of Liquidated Damages.

The Parties explicitly agree and intend that the provisions of ARTICLE 20 shall be fully enforceable by any court exercising jurisdiction over any dispute between the Parties arising under this Agreement. Each Party hereby irrevocably waives any defenses available to it under law or equity relating to the enforceability of the liquidated damages provisions set forth in ARTICLE 20.

ARTICLE 22
INDEMNIFICATION

22.1 Indemnification.

(a) From and after the Closing, Developer shall defend, indemnify, and hold harmless Buyer and the other Buyer Indemnified Parties from, for, and against all Claims and Liabilities (including third party Claims and Liabilities) caused by, arising out of, or in connection with: (i) breach by Developer of its representations and warranties under this Agreement; (ii) breach by

Developer of its covenants, agreements, or obligations pursuant to this Agreement or any Transaction Document; (iii) Developer's fraud, gross negligence, or willful misconduct; (iv) any loss in value of, or any inability to claim or otherwise take advantage of, relevant federal, state, and local tax credits and accelerated deprecation (MACRS) due to any act or omission by Developer; (v) any security breach, cyber-attack, other data security, or cyber incident or unauthorized access to any Developer IT Asset, which resulted in the unauthorized use, misappropriation, modification, encryption, corruption, disclosure, or transfer of any material information or data contained therein relating to the Project Company or the Project Assets, (vi) Intellectual property infringement with regard to the Project Assets; (vii) Claims or Liabilities arising from any oral farming leases pertaining to the any part of the Site that were not properly and legally terminated in accordance with Idaho law prior to the Closing Date, (viii) Claims or Liabilities of the Project Company arising on or prior to the Closing Date, including Pre-Closing Liabilities, (ix) of any ITC benefit, and (x) any payments or other obligations to the Contractor or other Subcontractors under any of the Project Contracts (including but not limited to Construction Costs, Interconnection Costs, or other payments under the EPC Contract and Major Supply Agreements), whether such payments or obligations arise or are incurred prior to, on, or after the Closing Date.

(b) From and after the Closing, Buyer shall defend, indemnify, and hold harmless Developer and its Affiliates, directors, officers, employees, and agents, from, for, and against all Claims and Liabilities (including third-party Claims and Liabilities) caused by, arising out of, or in connection with: (i) breach by Buyer of its representations and warranties under this Agreement; (ii) breach by Buyer of its covenants, agreements, or obligations pursuant to this Agreement or any Transaction Document; (iii) Buyer's fraud, gross negligence, or willful misconduct; and (iv) and, except to the extent part of Developer's obligations under this Agreement (including its indemnification obligations set forth herein, including pursuant to 22.1(a)), Claims or Liabilities of the Project Company first arising after the Closing Date.

(c) Notwithstanding any other provision of this Agreement or any other Transaction Document, following the Closing Date, a Party seeking indemnification under this Agreement (the "Indemnified Party") shall not be entitled to make any Claim for indemnification under 22.1(a) or 22.1(b), above with respect to the inaccuracy of any representation or warranty unless and until the aggregate amount of all Claims and Liabilities for indemnification exceeds one percent (1%) of the Purchase Price (the "Tipping Basket Amount"). If and when the Tipping Basket Amount is reached, the Indemnified Party shall be entitled to make a Claim for indemnification for all Claims and Liabilities with respect to the inaccuracy of representations or warranties.

(d) An Indemnified Party's claim shall not exceed one hundred percent (100%) of the Purchase Price (the "Liability Cap"), except in the case of fraud, willful misconduct, or gross negligence of a Party or its related persons, and for intellectual property infringement, liens, construction costs, and specified Pre-Closing Liabilities, for which there will be no Liability Cap.

(e) Buyer's right to indemnification based on representations, warranties, covenants, and other obligations in the Agreement will not be limited, diminished, or otherwise affected by any investigation conducted or knowledge obtained by Buyer before or after Closing with respect to the accuracy or inaccuracy of such representations, warranties, covenants or other obligations.

(f) The Indemnified Party shall give notice to the Party required to provide indemnification hereunder (the "Indemnifying Party") promptly after the Indemnified Party has actual knowledge of any Claim as to which indemnity may be sought hereunder, and the Indemnified Party shall permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of any Claim resulting therefrom; provided that:

(i) counsel for the Indemnifying Party who shall conduct the defense of such Claim shall be reasonably satisfactory to the Indemnified Party;

(ii) the Indemnified Party may participate in such defense at its own expense, except the Indemnifying Party shall reimburse the Indemnified Party for its participation in such defense to the extent that the Indemnifying Party requests the Indemnified Party to participate in its own defense; and

(iii) the omission by the Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent that such omission results in a failure of actual notice to the Indemnifying Party and the Indemnifying Party is damaged as a result of such failure to give notice.

Notwithstanding the foregoing, the Indemnifying Party may not settle any Claim or Liability related to the indemnity being provided hereunder without the consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed.

(g) With regard to any Claim or Liability which is the result of the joint or concurrent fault or negligence of Developer and Buyer or either Party and the Project Company, as the case may be, the Parties agree to jointly defend any Claim or Liability with respect thereto that is based on such joint or concurrent fault or negligence of Buyer and Developer or either Party and the Project Company, as the case may be. Any Liability or Claim of contribution or indemnification between Buyer and Developer relating to such Liabilities Claims shall be resolved on the basis of the percentage of fault or negligence and the Parties agree to reserve the determination of such percentage until after resolution of such Claim or Liability. Such pro rata share shall be based upon a final judicial determination of the Parties' comparative fault or negligence or, in the absence of such determination, by mutual agreement of the Parties.

(h) Nothing in this 22.1 is intended to allow any Indemnified Party to be indemnified from and against any third party Claims and Liabilities caused by, arising out of, or in connection with the performance of this Agreement or any other Transaction Document to the extent any of such Claims or Liabilities were caused by, arose out of, or were in any way incidental to or in connection with its own breach of any representation, warranty, or obligation under this Agreement or any other Transaction Document to which it is a party or its negligence, gross negligence or willful misconduct.

(i) For the purposes of determining whether an Indemnified Party has the right to indemnification under 22.1 and for the purposes of determining the amount of Claims or Liabilities under 22.1, the representations and warranties contained in this Agreement that are qualified by reference to "material," "materially," "Material Adverse Change," or any similar term shall be deemed to have been made without giving effect to such materiality qualifiers and such certificates shall be deemed to have been delivered without any "material" qualification.

(j) The amount of any indemnity payment made under this 22.1 shall be reduced by the amount of any indemnity or other payment received by the Indemnified Party from any counterparty to a Project Company Contract in respect of the event giving rise to the right of indemnity under this 22.1.

22.2 Title Indemnity and Liens.

(a) Developer shall promptly pay or cause to be paid when due all obligations for labor and material in connection with the Work. Developer shall discharge at once, or bond with a bonding

company or surety acceptable to Buyer or otherwise secure against all Liens and attachments which are filed in connection with the Work.

(b) Developer shall keep the Work and the Site free and clear of and shall promptly release or cause the release of all Liens and Claims, including recorded notices, Claims for nonpayment and *lis pendens*, arising from the performance of any Work covered by this Agreement or any other Transaction Document by the Developer Parties and all laborers, materialmen, mechanics, and other such persons. Developer shall have the right to contest any such Lien or Claim; provided, that Developer first provide to Buyer financial assurances in amount, form, and substance satisfactory to Buyer and otherwise complies with applicable Law with respect to removal of such Lien or Claim.

(c) Developer shall indemnify, defend, and hold harmless all Buyer Indemnified Parties from, for, and against (i) all laborers', material men's, and mechanics' Liens, or Claims made or filed upon the Work or the Site on account of any labor performed or labor, services, equipment, and materials furnished by the Developer Parties and all laborers, materialmen, mechanics, and other persons in connection with the Work and (ii) any defect in title upon any of Work, including the Equipment, Materials, and the Project, supplied pursuant to this Agreement.

(d) If any Lien or Claim arising out of this Agreement or any other Transaction Document is filed before or after Work is completed, Developer, within ten (10) days after receiving from Buyer written notice of such Lien or Claim, shall obtain release or provide financial assurance satisfactory to Buyer to protect Buyer from or otherwise satisfy such Lien or Claim. If Developer fails to do so, Buyer may take such steps and make such expenditures as in its discretion it deems advisable to obtain release of or otherwise satisfy any such Lien or Claim, and Developer shall upon demand reimburse Buyer for all costs incurred and expenditures made by Buyer in obtaining such release or satisfaction including administrative costs, attorneys' fees and other expenses or Buyer shall have the right to deduct the amount of such costs from the amount payable to Developer.

(e) Developer's obligation to indemnify, defend, and hold harmless Buyer Indemnified Parties from Liens and Claims shall not in any way be rendered unenforceable, or altered, amended, eliminated, or otherwise conditioned by any applicable Laws related to processing such Liens or Claims. Buyer shall have no obligation to deliver a copy of any notice of Claim or right to a Lien to Developer or any other person or entity.

(f) Developer shall at its own expense defend any suit or proceeding based on any Claim for which Developer is responsible under this 22.3. Buyer shall give Developer such assistance as Developer may reasonably require in the defense of such Claim, and Buyer shall have the right to be represented therein by counsel of its own choosing at its own expense. If Developer fails to defend diligently any such Claim, Buyer may, in its reasonable discretion, either defend or settle the Claim without the consent of Developer and without relieving Developer of the obligation to indemnify as provided herein. In such a case Developer's obligation to defend shall include reimbursement of Buyer's reasonable legal fees and related costs incurred in defending or settling the Claim.

22.3 Intellectual Property.

In case any part of the Work or the ownership or operation of the Project is held to infringe or violate any patent, copyright, or other intellectual property right of a third party, and the use of the Work, or the operation of the Project is restricted or prohibited as a result thereof, Developer shall, at its sole cost and expense, at Developer's option, either (i) procure for Buyer the right to continue using the Work, (ii) replace the same with non-infringing comparable substitute Work, or

(iii) modify the Work so that it becomes non-infringing; provided, that such modification does not adversely affect the Work.

22.4 Indemnity Period.

The Parties' obligation to indemnify one another consistent with the provisions of this ARTICLE 22 shall continue after the Closing Date as follows (collectively, the "Indemnity Period"):

(a) Developer Indemnity of Buyer Indemnified Parties.

(i) Except as set forth in 22.4(ii)-(iii) below, Developer's obligation to indemnify Buyer Indemnified Parties pursuant to 22.1(a)(i) and 22.1(a)(iv) shall survive for two (2) years following the Closing Date.

(ii) Developer's obligation to indemnify Buyer Indemnified Parties pursuant to 22.1(a)(i) for a breach of Developer's Fundamental Representation and a breach of the representations and warranties set forth in 4.6, 4.17, 4.18 and ARTICLE 17, and pursuant to 22.1(a)(iii), 22.1(a)(v), 22.1(a)(vi) and 22.1(a)(vii), in each case, shall survive indefinitely.

(iii) Developer's obligation to indemnify Buyer Indemnified Parties pursuant to 22.1(a)(i) for a breach of the representations and warranties set forth in 4.14 shall survive for a period of five (5) years following the Closing Date.

(iv) Developer's obligation to indemnify Buyer Indemnified Parties pursuant to 22.1(a)(ii) shall survive until such covenants are fully performed.

(b) Buyer Indemnity of Developer.

(i) Buyer's obligation to indemnify Developer Indemnified Parties pursuant to 22.1(a)(i) for a breach of Buyer's Fundamental Representation or pursuant to 22.1(a)(iv), shall survive indefinitely.

(ii) For all other Claims and Liabilities, Buyer's obligation to indemnify Developer Indemnified Parties pursuant to 22.1(a) shall survive for twenty-four (24) months following the Closing Date.

22.5 Tax Treatment of Indemnity Payments.

All indemnity payments under ARTICLE 17 or this ARTICLE 22 will be treated as a non-taxable adjustment of the Purchase Price, unless otherwise required by applicable Laws (as reasonably determined by Buyer), in which case the payment will be paid on an After-Tax Basis.

ARTICLE 23
INSURANCE

23.1 Contractor's and Subcontractors' Insurance Coverage.

Developer shall maintain, shall cause the Project Company to maintain, and shall require and cause Contractor and all Major Subcontractors, while performing work on the Site, to provide, pay for, and continuously maintain in full force and effect insurance coverage in accordance with the requirements of Appendix L-1.

23.2 Buyer's Insurance.

Buyer shall during the term of this Agreement maintain in full force and effect insurance coverage in accordance with the requirements of Appendix L-2.

23.3 Developer's Cooperation with Buyer.

Developer agrees to provide such assistance and documentation as Buyer may request in connection with Claims Buyer may make under its insurance policies purchased in connection with the Project for damage or events that occur after the Execution Date and prior to the expiration of the applicable Warranty Period.

ARTICLE 24
FORCE MAJEURE

24.1 Effect of Force Majeure.

With the exceptions of Developer's obligation to completely fund all Construction Costs and Interconnection Costs and all of Developer's payment and indemnity obligations hereunder, neither Party shall be in default or in breach of its obligations under this Agreement or otherwise be liable to the other Party for any delay or failure in the performance of any of its obligations under this Agreement if and to the extent such delay or failure is a result of Force Majeure. The protections afforded under this 24.1 to a Party shall be of no greater scope and no longer duration, than is required by the Force Majeure. Notwithstanding anything to the contrary contained in this 24.1, no Force Majeure shall relieve, suspend, or otherwise excuse any Party from performing any obligation to make any payment owed to another Party or to indemnify, defend, or hold harmless another Party pursuant to this Agreement. In no event may Developer claim a Force Majeure for economic reasons or for changes in Developer's costs or the costs of Contractor or Subcontractors, including commodity price changes, disruption in supply chain, changes in labor markets, increased cost of labor or transportation, or due to changes in scope due to changes in engineering, design, or applied engineering not requested by Buyer. The Parties agree that no delay caused by any Force Majeure will result in a change to the Purchase Price.

24.2 Notice of Occurrence.

If either Party considers that any event of Force Majeure has occurred which may affect performance of its obligations under this Agreement, it shall promptly notify the other Party thereof stating the full particulars, including the obligations that are affected thereby, the estimated period during which performance may be delayed or prevented, and the particulars of the program to be implemented to resume normal performance hereunder. If a "Force Majeure" event under any of the Project Company Contracts occurs with respect to or is claimed by Contractor or any Major Subcontractor, then Developer shall promptly provide notice thereof to Buyer describing: (i) the obligations of Contractor or Major Subcontractor that are affected; (ii) the estimated period during which performance may be delayed or prevented; and (iii) the particulars of the program to be implemented by Contractor or Major Subcontractor in order to resume normal performance thereunder; provided, that in no event shall Developer be relieved of any of its obligations under this Agreement as a result of Contractor or any Major Subcontractor's claimed "Force Majeure" event under the applicable Project Company Contract unless such "Force Majeure" under the applicable Project Company Contract independently qualifies as an event of Force Majeure under this Agreement.

24.3 Performance to Continue.

Upon the occurrence of any event of Force Majeure, the affected Party shall use reasonable efforts to mitigate the effects of Force Majeure, resume normal performance of this Agreement within the shortest time practicable and continue to perform its obligations under this Agreement insofar as they are not affected by the Force Majeure.

24.4 Termination in Consequence of Force Majeure.

If an event of Force Majeure continues for a period of one hundred twenty (120) days in the aggregate that materially affects the ability of Developer to perform the Work, and as a result thereof there is a corresponding delay in the schedule for performance of the Work and the Guaranteed Substantial Completion Date of at least one hundred twenty (120) days, then, notwithstanding that Developer may by reason thereof have been granted an extension of the schedule for performance of the Work and the Outside Closing Date, by Change Order, Buyer shall be entitled to terminate this Agreement upon thirty (30) days advance written notice to Developer. If at the expiration of such thirty (30)-day period such Force Majeure shall still continue, this Agreement shall automatically terminate without any further action on the part of either Party and the provisions of 26.1 shall apply.

24.5 Risk of Loss.

Prior to termination of this Agreement, nothing in this ARTICLE 24 shall change the allocation to Developer of the risk of loss or damage prior to the Substantial Completion Date and any Change Order resulting from a Force Majeure shall take into account such allocation of the risk of loss or damage.

ARTICLE 25
DEFAULT

25.1 Developer Default.

Developer shall be in default (a "Developer Default") hereunder if:

(a) Developer fails to pay Buyer any undisputed amount due Buyer under this Agreement, and such failure continues for fifteen (15) Business Days after Developer receives notice thereof from Buyer;

(b) Developer fails to pay Contractor any undisputed amount due Contractor under the EPC Contract and such failure continues for fifteen (15) Business Days after Developer receives notice thereof from Buyer;

(c) Developer fails to deliver and maintain Credit Support as required by ARTICLE 6, and such failure continues for seven (7) Business Days after Developer receives notice thereof from Buyer;

(d) Contractor fails to deliver and maintain Credit Support as required by the EPC Contract and such failure continues for five (5) Business Days after Developer receives notice thereof from Buyer;

(e) Developer accrues Delay Liquidated Damages in excess of the Delay Liquidated Damages Cap;

(f) Developer accrues Performance Liquidated Damages in excess of the Performance Liquidated Damages Cap;

(g) Developer fails in any material respect to comply with any of its other material obligations under this Agreement (not otherwise described in this 25.1) and such failure continues for thirty (30) days after Developer receives notice thereof from Buyer; provided, however, that such period of thirty (30) days shall be extended for a period not to exceed an additional thirty (30) days if: (i) such breach is reasonably capable of cure and curing such breach reasonably requires more than thirty (30) days; (ii) Developer commences such cure as soon as reasonably practicable after Developer receives notice thereof; and (iii) Developer continuously and diligently pursues such cure;

(h) Developer shall (i) commence a voluntary case under the Bankruptcy Code; (ii) file a petition seeking to take advantage of any other Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts (collectively, "Bankruptcy Laws"); (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an insolvency case under Bankruptcy Laws; (iv) apply for, or consent to or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of a substantial part of its assets; (v) admit in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; (vi) make a general assignment for the benefit of creditors; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) have a case or other proceeding commenced by a third party against it seeking (A) relief under the Bankruptcy Code or under any other Bankruptcy Laws or (B) the appointment of a trustee, receiver, custodian, liquidator, or the like of such Developer Party of all or any substantial part of its assets, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) days;

(i) any representation or warranty made by Developer for which an express remedy is not provided shall prove to have been false in any material respect as of the date made or deemed made; provided, however, that if the circumstances which make such representation or warranty false are subject to cure or remedy by Developer within a period of thirty (30) Business Days and Developer is diligently pursuing such cure or remedy, then such representation or warranty being false in any material respect shall not become a Developer Default until thirty (30) Business Days after Developer receives notice thereof from Buyer (unless such representation and warranty is no longer false in any material respect prior thereto); or

(j) Developer makes a Material Update to the disclosure schedules which has not been cured within thirty (30) days following receipt of written notice of such Material Update.

25.2 Buyer Default.

Buyer shall be in default (a "Buyer Default") hereunder if:

(a) Buyer fails to pay Developer any undisputed amount due Developer under this Agreement, and such failure continues for fifteen (15) Business Days after Buyer receives notice thereof from Developer;

(b) Buyer fails in any material respect to comply with any of its other material obligations under this Agreement (not otherwise described in this 25.2); provided, however, that if such failure can be cured or remedied by Buyer within a period of thirty (30) Business Days and Buyer is diligently pursuing such cure or remedy, then such failure shall not become a Buyer Default until thirty (30) Business Days after Buyer receives notice thereof from Developer (unless such failure is cured or remedied prior thereto);

(c) Buyer shall (i) commence a voluntary case under the Bankruptcy Code; (ii) file a petition seeking to take advantage of any Bankruptcy Laws; (iii) consent to or fail to contest in a

timely and appropriate manner any petition filed against it in an insolvency case under the Bankruptcy Laws; (iv) apply for, or consent to or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of a substantial part of its assets; (v) admit in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; (vi) make a general assignment for the benefit of creditors; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) have a case or other proceeding commenced by a third party against it seeking (A) relief under the Bankruptcy Code or under any other Bankruptcy Laws or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of Buyer of all or any substantial part of its assets, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) days; or

(d) any representation or warranty made by Buyer in this Agreement for which an express remedy is not provided shall have been false in any material respect as of the date made; provided, however, that if the circumstances which make such representation or warranty false are subject to cure or remedy by Buyer within a period of thirty (30) Business Days and Buyer is diligently pursuing such cure or remedy, then such representation or warranty being false in any material respect shall not become a Buyer Default until thirty (30) Business Days after Buyer receives notice thereof from Developer (unless such representation and warranty is no longer false in any material respect prior thereto).

25.3 Cure Rights.

(a) Cure Rights. During the occurrence and continuance of any Developer Default and upon receipt of any notice that Developer is in default of any of its obligations under this or any of the Transaction Documents, and in addition to any other rights Buyer may have hereunder or at law or in equity, Buyer shall have the right, but not the obligation, to cure any Developer Default under this or any Transaction Document. If Buyer at any time exercises its right under this 25.3(a), Developer shall indemnify Buyer from, for, and against any third-party costs incurred to exercise its right under this 25.3(a).

(b) No Excuse. Notwithstanding the exercise by Buyer of any of its rights under this 25.3, nothing set forth in this 25.3 shall excuse Developer of its obligations to remedy a Developer Default and perform its obligations hereunder.

ARTICLE 26
TERMINATION

26.1 Termination by Buyer.

(a) Upon the occurrence and continuation of a Developer Default, this Agreement shall terminate as follows:

(i) with respect to a Developer Default described in 25.1, upon delivery to Developer of written notice of termination after the end of the applicable cure period provided for in 25.1, and if no such cure period is provided for in 25.1, then fourteen (14) days after delivery to Developer of such written notice of termination.

(b) Notwithstanding anything to the contrary in this Agreement, in the event of any termination by Buyer under this 26.1 or otherwise, Buyer shall be entitled to seek all damages available at law or in equity with respect to any Claims or Liabilities arising as a result of such Developer Default, notwithstanding a termination of this Agreement.

26.2 Termination by Developer.

(a) Upon the occurrence and continuation of a Buyer Default, this Agreement shall terminate as follows:

(i) with respect to a Buyer Default described in 25.2(c), immediately; and

(ii) with respect to a Buyer Default described in 25.2 (other than 25.2(c)), upon delivery to Developer of written notice of termination after the end of the applicable cure period provided for in 25.1, and if no such cure period is provided for in 25.1, then fourteen (14) days after delivery to Developer of such written notice of termination.

Notwithstanding anything to the contrary in this Agreement, in the event of any termination by Developer under this 26.2 with respect to a Buyer Default set forth in 25.2(a), Developer shall be entitled to seek all damages available at law or in equity with respect to any Claims or Liabilities arising as a result of such Buyer Default, notwithstanding a termination of this Agreement. OTHER THAN AS EXPRESSLY SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, THE RIGHTS AND REMEDIES OF DEVELOPER SET FORTH IN 26.2(a) FOR A BUYER DEFAULT ARE THE EXCLUSIVE REMEDIES OF DEVELOPER AND NO OTHER REMEDIES OF ANY KIND WHATSOEVER SHALL EXIST OR APPLY IN THE EVENT OF A BUYER DEFAULT OR TERMINATION OF THIS AGREEMENT BY DEVELOPER IN ACCORDANCE WITH THIS ARTICLE 26.

ARTICLE 27
DISPUTE RESOLUTION

Following written notice from either Party to the other Party setting forth a dispute arising from, relating to or otherwise in connection with or arising out of this Agreement, the Parties shall use good faith efforts to settle such dispute through negotiation between Buyer's Representative and Developer's Representative. If the dispute is not resolved by such negotiations within fifteen (15) days after delivery of such initial notice, either Party may, by delivering a subsequent written notice to the other Party, cause the matter to be referred to a meeting of appropriate senior management representatives of the Parties with the power and authority to resolve such dispute. Such meeting shall be held within thirty (30) days following the delivery of the subsequent notice. If the matter is not resolved within thirty (30) days after the first such meeting of the senior management representatives or such later date as may be mutually agreed upon by the Parties, either Party may then, subject to the terms of this Agreement, commence legal action in a court of competent jurisdiction in order to resolve the dispute.

ARTICLE 28
ASSIGNMENT

28.1 Assignment of Developer's Interests.

(a) Developer shall not sell, transfer, or otherwise assign (directly or indirectly, through merger, Change of Control, or otherwise), in whole or part, this Agreement without the prior written consent of Buyer; provided, however, that Buyer's consent shall not be required for (i) a collateral assignment of the Agreement to any Lender for the purpose of construction financing of the Project; or (ii) to an Affiliate that is wholly-owned by the ultimate parent of Developer; provided, that such assignment to an Affiliate shall only be allowed if (A) such Affiliate remains an Affiliate of Developer (B) the Credit Support provided by Developer or, if applicable, Project Company remains in place and covers such Affiliate's obligations, (C) such Affiliate shall execute an assumption agreement assuming all of Developer's obligations under this Agreement, (D) such Affiliate is (or has contracted with) a

Qualified Operator, and (E) such Affiliate (or its parent company) has experience in project development and construction management of similar projects of a similar size.

(b) A Change of Control with respect to Developer's Parent shall be considered an assignment of this Agreement to a third party and shall be subject to 28.1(a).

(c) In the event Developer desires to make an assignment pursuant to 28.1(a)(i), above, Buyer agrees to use commercially reasonable efforts to cooperate with Developer's pursuit of construction financing, including by providing such customary certificates, opinions, and consents as lenders may reasonably require in connection therewith, provided that any such consents shall be in the form attached to this Agreement as Exhibit I unless Buyer agrees to any deviations thereto, and provided further that Developer shall reimburse Buyer for its out-of-pocket costs and expenses (including reasonable attorney's fees and expenses) in regards to such certificates, opinions, and consents.

28.2 Assignment of Buyer's Interests.

Buyer shall not sell, transfer, or otherwise assign (directly or indirectly, through merger, Change of Control, or otherwise), in whole or part, this Agreement without the prior written consent of Developer; provided, however, that Developer's consent shall not be required for Buyer's assignment of the Agreement to an Affiliate or successor-in-interest that is equally creditworthy (or better) to Buyer and which assignee executes an assumption agreement assuming all of Buyer's obligations under this Agreement.

ARTICLE 29
CONFIDENTIALITY

29.1 Confidentiality

(a) Information may be exchanged between Buyer and Developer that is CEII or the disclosing Party considers proprietary and confidential. Each Party agrees that it shall and shall cause its Affiliates and its and their respective officers, directors, consultants, employees, legal counsel, agents, and representatives (together with the Affiliates, the "Confidentiality Affiliates") to: (i) hold confidential and not disclose (other than to its Confidentiality Affiliates having a reasonable need to know in connection with the permitted purposes hereunder), without the prior consent of the other Party, all CEII, known confidential or proprietary written or oral information or data (including sources of equity or other financing, development strategy, competitor information, cost and pricing data, warranties, technical information, research, developmental, engineering, manufacturing, marketing, sales, financial, operating, performance, business and process information or data, knowhow and computer programming and other software techniques) provided or developed by the other Party or its Confidentiality Affiliates in connection herewith or the Work ("Confidential Information"); and (ii) use such Confidential Information or CEII only for the purposes of performing its obligations or exercising its rights hereunder. In no event shall any Confidential Information or CEII be disclosed to any competitor of Developer or Buyer. For Confidential Information that is not CEII or a trade secret under applicable Law, the foregoing obligations shall expire three (3) years after the Substantial Completion Date. The obligation to not disclose and hold CEII as confidential survives indefinitely.

(b) The obligations contained in the preceding paragraph shall not apply, or shall cease to apply, to Confidential Information if or when, and to the extent that, such Confidential Information (i) was known to the receiving Party or its Confidentiality Affiliates prior to receipt from the disclosing Party or its Confidentiality Affiliates; (ii) was, or becomes through no breach of the

receiving Party's obligations hereunder, known to the public; (iii) becomes known to the receiving Party or its Confidentiality Affiliates from other sources under circumstances not involving any breach of any confidentiality obligation between such source and the disclosing Party's or disclosing Party's Confidentiality Affiliates or a third party; (iv) is independently developed by the receiving Party or its Confidentiality Affiliates; (v) is required to be publicly disclosed by applicable Law or Governmental Authority or applicable legal process (this does not include disclosures that are made under a protective agreement or similar instrument); or (vi) relates to the tax treatment or tax structure of any transaction contemplated by this Agreement (the "Transaction"). The Parties (and any employee, representative, or agent of any party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all other materials of any kind (including opinions or other tax analyses) that are provided to any party hereto to the extent relating to such tax treatment and tax structure, it being understood that this ARTICLE 29 is intended to prevent the Transaction from being treated as a "reportable transaction" as a result of it being a transaction offered to a taxpayer under conditions of confidentiality within the meaning of Sections 6011, 6111 and 6112 of the Code (or any successor provision) and the Treasury Regulations thereunder (as clarified by Notice 2004-80 and Notice 2005-22) and shall be construed in a manner consistent with such purpose. Developer acknowledges that Buyer is subject to regulation as a public utility, and as such may be required to disclose all or substantially all information provided by Developer pursuant to this Agreement, including the terms of this Agreement and any Transaction Document, by order of state and federal Governmental Authorities, and that such disclosure shall in no event be deemed a violation of this ARTICLE 29.

(c) When required by a Governmental Authority, a Party may disclose the Confidential Information (but not CEII) of the other Party to such Governmental Authority; provided, however, that prior to making any such disclosure, such Party shall (unless prohibited from doing so by applicable Law or the Governmental Authority): (i) provide the other Party with timely advance notice of the Confidential Information requested by such Governmental Authority and the intent of such Party to so disclose; (ii) minimize to the extent possible (consistent with applicable Law and the requirements of the Governmental Authority involved) the amount of Confidential Information to be provided to the Governmental Authority involved; and (iii) make every reasonable effort (which shall include participation by the other Party in discussions with the Governmental Authority involved) to secure confidential treatment and to minimize the Confidential Information to be provided. In the event that efforts to secure confidential treatment are unsuccessful, the other Party shall have the prior right to revise such information to minimize the disclosure of such Confidential Information in a manner consistent with applicable Laws and the requirements of the Governmental Authority involved

(d) Notwithstanding anything to the contrary contained herein, Buyer may disclose Confidential Information upon reasonable notice to Developer if Buyer reasonably determines, based upon its status as a regulated public utility, that disclosure to a Governmental Authority is necessary or appropriate in connection with any submission or application to, or response from, any such authorities regarding this Agreement, the effect thereof on Buyer's rates or investment return or similar matters; provided, that Buyer shall (i) use commercially reasonable efforts to keep Developer informed with respect to such disclosures, (ii) file a written request in the form of a motion for protective order or for confidential treatment or other comparable written request that any Confidential Information be afforded confidential treatment and otherwise endeavor to obtain confidential treatment of Confidential Information, and (iii) notify Developer promptly if it receives notice of any challenge to the request that such Confidential Information be afforded confidential treatment.

(e) Buyer's disclosure of drawings and manuals received from Developer Parties to third parties in accordance with Buyer's rights and obligations hereunder shall not be a breach of this ARTICLE 29.

ARTICLE 30
MISCELLANEOUS PROVISIONS

30.1 Notices, Consents, and Approvals.

Contact information for notices, requests, demands and other communications required or permitted hereunder is as follows:

(a) if to Developer, to:

[_____]

or to such other person(s) or address(es) as Developer shall provide to Buyer from time to time in accordance with this 30.1;

(b) if to Buyer, to:

[_____]

and:

[_____]

with copies to:

or to such other person(s) or address(es) as Buyer shall provide to Developer from time to time in accordance with this 30.1.

(c) All notices (including acceptances, consents, approvals, agreements, deliveries of information, designations), requests, demands, and other communications required or permitted hereunder shall be in writing, properly addressed as provided in paragraphs (a) and (b) above, and given by (i) hand delivery, (ii) a national overnight courier service, (iii) confirmed e-mail transmission, followed by a hard copy, or (iv) certified or registered mail, return receipt requested, and postage prepaid. Any such notice, request, demand, or other communication shall be deemed to have been duly given as of the date delivered if by hand delivery, national overnight courier service, or confirmed e-mail transmission (provided a hard copy promptly follows by other means provided herein). Any notice shall be deemed delivered five (5) days after mailing if by certified or registered mail.

30.2 Entire Agreement.

This Agreement, together with the Appendices, Schedules, and Exhibits attached hereto, contains the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, of the Parties relating to the subject matter hereof. Any oral or written representation, warranty, course of dealing, or trade usage not contained or referenced herein shall not be binding on either Party.

30.3 Amendment; Waiver.

No amendment or other modification of any provision of this Agreement shall be valid or binding unless it is signed by each of the Parties. No waiver of any provision of this Agreement shall

be valid or binding unless it signed by the Party waiving compliance with such provision. No delay on the part of either Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other such right, power, or privilege. No waiver of any breach, term, or condition of this Agreement by any Party shall constitute a subsequent waiver of the same or any other breach, term, or condition of this Agreement.

30.4 Successors and Assigns.

Each and all of the rights, obligations, covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective successors and assigns.

30.5 Third Party Beneficiaries.

The provisions of this Agreement shall only be for the benefit of, and enforceable by, the Parties hereto and shall not inure to the benefit of or be enforceable by any third party.

30.6 Severability.

In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

30.7 Further Assurances.

Each Party shall execute and deliver or cause to be executed and delivered such documents and instruments not otherwise specified herein, and take or cause to be taken all such other actions, as the other Party may reasonably request to more fully and effectively carry out the intent and purposes of this Agreement.

30.8 Publicity.

Except as required by applicable Law, the Parties agree that neither Party will issue or release for external publication any press release, article, advertising, or other publicity matter in any form (including print, electronic, or interview) relating to the Project, or to this Agreement without first consulting with and obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that a press release or other public announcement, regulatory filing, statement, or comment made without such consent shall not be in violation of this 30.8 if it is made in order for the disclosing Party or any of its Affiliates to comply with applicable Laws or applicable stock exchange rules and in the reasonable judgment of the Party making such release or announcement, and prior review and joint approval by the Parties, despite reasonable efforts to obtain the same, would prevent dissemination of such release or announcement in a sufficiently timely fashion to comply with such applicable Laws or rules.

30.9 Independent Contractor.

Developer is an independent contractor with respect to the Work, and each part thereof, and in respect of all work to be performed hereunder. Neither Developer nor any of the other Developer Parties shall be deemed to be agents, representatives, joint ventures, employees, or servants of Buyer by reason of their performance hereunder or in any manner dealt with herein. Neither Party shall perform any act or make any representation to any Person to the effect that Developer or any other Developer Parties is the agent of Buyer.

30.10 Separation of Functions.

Developer hereby acknowledges that (i) Buyer is acting solely in its capacity as a local distribution company, (ii) the activities of Buyer or its Affiliates as Transmission Provider are outside the scope of this Agreement, and (iii) neither Buyer nor its Affiliates shall not have any liabilities or obligations hereunder arising out of any actions or inactions of Buyer or its Affiliates acting in its role as Transmission Provider.

30.11 Survival.

The provisions of ARTICLE 20 (*LIQUIDATED DAMAGES*) ARTICLE 21 (*LIMITATION OF LIABILITY*), ARTICLE 22 (*INDEMNIFICATION*), ARTICLE 27 (*DISPUTE RESOLUTION*), ARTICLE 29 (*CONFIDENTIALITY*), 8.19 (*Records and Accounts*), and 30.12 (*Governing Law; Waiver of Jury Trial*.) of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely; provided, that the foregoing enumeration shall not be interpreted to bar survival of any other provision hereof which by its express terms or by operation of Law would otherwise be deemed to survive.

30.12 Governing Law; Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF IDAHO (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

(B) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY CONSENTS AND AGREES THAT ANY LEGAL ACTION OR PROCEEDINGS WITH RESPECT TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN ANY OF THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO, HAVING SUBJECT MATTER JURISDICTION, OR IF SUCH COURT LACKS SUBJECT MATTER JURISDICTION, THEN THE STATE COURT IN ADA COUNTY, IDAHO.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

30.13 Counterparts.

This Agreement may be executed by the Parties in two or more separate counterparts (including by PDF transmission), each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

30.14 Captions.

The captions for Articles and Sections contained in this Agreement, including the Appendices, Schedules and Exhibits attached hereto, are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

30.15 Offset.

Notwithstanding any other provision of this Agreement to the contrary, any and all amounts owing and payable by Buyer or Developer to the other hereunder for the Work, shall be subject to offset and reduction in an amount equal to any amounts that may be owing at any time. Further, for the avoidance of doubt, with respect to any provision of this Agreement that allows Buyer to offset, setoff or draw against a bond or other credit support any amount then owed to Developer, Buyer shall have the express right to include in the amount offset, set-off or drawn under a bond or other credit support all of the reasonable costs and expenses it incurs in connection with enforcing such provision (including attorneys' and other consultants' fees).

30.16 Time of the Essence.

Time is of the essence in the performance of the Work by Developer hereunder.

30.17 Non-Exclusive Remedy.

Except as otherwise provided in the Transaction Documents, duties and obligations imposed by the Transaction Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

30.18 Recitals.

The Recitals in this Agreement are incorporated into this Agreement by reference.

30.19 Supplier Code of Conduct.

At all times during the term of this Agreement, Contractor agrees to comply with IPC's Supplier Code of Conduct, as revised from time to time, and available at www.idahopower.com/AboutUs/BusinessToBusiness/default.cfm.

30.20 Prohibited Technology.

Prohibited Technology. Pursuant to Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and Federal Acquisition Regulation (FAR) 52.204-25 (Aug. 2020), Seller agrees, represents, and warrants that Seller shall not supply or deliver to IPC any "covered telecommunications equipment or services" as a substantial or essential component of any system or critical technology of any system. As defined in FAR 52.204-25(a), "covered telecommunications equipment or services" includes equipment, systems, products, or services made by any of the following companies, or any subsidiary or affiliate thereof (including companies with the same principal word in the name, e.g., "Huawei" or "Hytera"): Huawei Technologies Company; ZTE Corporation; Hytera Communications Corporation; Hangzhou Hikvision Digital Technology Company; or Dahua Technology Company. "Covered telecommunications equipment or services" may include, but are not limited to, video/monitoring surveillance equipment/services, public switching and transmission equipment, private switches, cables, local area networks, modems, mobile phones, wireless devices, landline telephones, laptops, desktop computers, answering machines, teleprinters, fax machines, and routers. "Covered telecommunications equipment or services" do not include telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that the equipment transmits or handles.

To the extent that the systems, products, or services to be provided by Seller under this Agreement may be procured by IPC in support of or to satisfy IPC's obligations under agreements with a federal governmental entity, Seller further agrees that FAR 52.204-25 (Aug. 2020), except for paragraph (b)(2) thereof, shall be incorporated by reference into this Agreement and is binding on Seller, and that Seller does not use any equipment, system, or service that uses covered telecommunications equipment or services and will not supply any covered telecommunications equipment or services to IPC. Seller further agrees that, if it identifies covered telecommunications equipment or services used as a substantial or essential component of any system or as critical technology as part of any system during contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall immediately notify IPC and reasonably cooperate with IPC's requests for information

30.21 Performance Security.

Within five (5) Business Days after IPUC Submission, Developer shall provide, or cause to be provided cash collateral or a letter of credit, at the option of Developer, including, without limitation, Buyer's applicable credit support requirements, in the amount of $[__] million ("Developer Security").

Within five (5) Business Days after IPUC Approval and through Final Completion, the amount of Developer Security that Developer shall be required to provide shall increase to $[Project Cost] million.

Within five (5) Business Days after Final Completion, through two years after the Final Completion, the amount of Developer Security that Developer shall be required to provide shall be decreased to $[__] million.

(Signature page follows)

IN WITNESS WHEREOF, each of the authorized representatives of the Parties have executed this Agreement as of the first date set forth above.

DEVELOPER: [_____]

By: _____ _____

Name: ___ _____

Title: ____ _____

BUYER: IDAHO POWER COMPANY

By: _____ _____

Name: ___ _____

Title: ____ _____

APPENDICES

APPENDIX A

TECHNICAL SPECIFICATION AND SCOPE OF WORK

[See separate attachment]

APPENDIX B

PROJECT SCHEDULE

[See separate attachment]

APPENDIX C

MAJOR SUBCONTRACTORS

[See separate attachment]

APPENDIX D

D-1: FORM OF CERTIFICATE OF MECHANICAL COMPLETION

D-2: FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

D-3: FORM OF CERTIFICATE OF FINAL COMPLETION

[See separate attachments]

APPENDIX E

MAJOR EQUIPMENT WARRANTIES

[See separate attachment]

APPENDIX F

MANUALS

[See separate attachment]

APPENDIX G

ENGINEERING DOCUMENTS, DRAWINGS, AND OTHER DELIVERABLES

[See separate attachment]

KEY PERSONNEL

Buyer's Key Person

Name:

Title:

Phone:

Email:

Developer's Key Person

Name:

Title:

Phone:

Email:

Contactor's Key Person (*to be provided following execution of the EPC Contract*)

Name:

Title:

Phone:

Email:

Major Subcontractor's Key Person (*to be provided following execution of Major Subcontracts*)

Name:

Title:

Company:

Phone:

Email:

Major Subcontractor's Key Person

Name:

Title:

Company:

Phone:

Email:

Major Subcontractor's Key Person

Name:

Title:

Company:

Phone:

Email:

APPENDIX I

RELEASE AND WAIVER OF LIENS AND CLAIMS

[See separate attachments]

APPENDIX J

CRITICAL MILESTONES

[See separate attachment]

FORM OF PROGRESS REPORT

1.0 Progress Report Requirements

Electronic copies of each complete and final Progress Report in accordance with the below requirements and the requirements of Section 11.6 of the Agreement shall be provided in Microsoft Word, Microsoft Excel, Microsoft Project, and Adobe Acrobat.

Each Progress Report shall satisfy the minimum requirements herein.

(a) Table of Contents – Progress Report

(b) Executive Summary – Current Month

A synopsis and narrative of project status, issues and near future plans addressing specific aspects of the project shall be included in the Progress Report, including a description of construction, engineering (by discipline), procurement (issuance of major purchase orders and subcontracts), shipment/delivery of major items, and expected Milestone Completion Dates.

(c) Personnel Safety

A synopsis of Developer's safety performance for the preceding month shall be included in the Progress Report, including numbers and types of injuries and lost time accidents.

(d) Environmental Report

A synopsis of Developer's environmental compliance for the preceding month shall be included in the Progress Report, including a description of any deviations and reporting from applicable regulations, codes, and standards.

(e) Summary of Progress and Status of Project.

Preceding Month – A synopsis of the project progress completed as of the preceding month shall be included in the Progress Report. The reporting format shall be based on completion of Critical Milestones and other critical path activities, and construction, engineering (organized by discipline), procurement (issuance of purchase orders), shipment of materials and equipment to the Site, status of material and equipment in storage, training, and start-up.

Next Month – The expected progress for the project in the next month shall be included in the Progress Report in outline form based on engineering, procurement, shipment, construction, and equipment installation and commissioning.

(f) Organization Chart

A current organization chart for the project, including all subcontractors on Site during the previous month and expected to be on Site for the next month.

(g) Meeting Status

A summary with minutes of major meetings for the preceding month shall be included as well as an agenda for next month's meeting identifying the date, location, expected attendees, and a one or two-sentence summary of anticipated topics of discussion for the next month and schedule for the next month meeting date.

(h) Priorities/Issues/Concerns

Identification and evaluation of critical issues shall be included in the Progress Report. Any critical issues shall be highlighted in the relevant section of the Progress Report.

(i) Schedule Update

Reporting on important items and events, such as purchases and dates of arrival of major Equipment components and the completion of Critical Milestones shall be included in the Progress Report.

The reporting format (hard and electronic copy) shall use Microsoft Project. An updated copy of the Project Schedule shall be attached to the Progress Report with a written analysis of schedule status, including forecasted and actual versus planned progress as indicated by the initial base line Project Schedule (and any updates thereof), with reference to the Critical Milestones and Project Schedule.

Progress curves measuring actual progress versus planned progress for the total progress as well as for individual bulk quantities such as cable pulled, terminations, duct bank, concrete poured, steel erected, structures erected, conductor installed, etc., shall be included in the Progress Report.

(j) Permit Status

A list of Permits and Developer Regulatory Approvals shall be included in the Progress Report, including current status and the date each Permit and Developer Regulatory Approval is to be obtained.

(k) Drawings and Procurement Status

The updated engineering drawing list, engineering and procurement schedule, and current status as compared to overall Project Schedule shall be included in the Progress Report. Depending upon volume, this may be submitted on a monthly basis as a separate document.

(l) Project Financial Status

The section shall include the billing, forecast, and accrual breakdowns, for the preceding month, a comparison of the progress payment schedule with the actual progress payments to date, financial review of the project to date for each line segment and the substations, and updated commodity curves for the project.

Appendix L-1

DEVELOPER INSURANCE

Developer shall obtain or cause Project Company or Contractor to obtain all insurance policies as set forth in Section (C) below. For purposes of this Appendix L-1: Developer Insurance, insurance requirements shall be met by either Developer, Project Company or its Contractor, as set forth in Section (C) below. Each such policy shall be set forth in Schedule 4.20.

A. Insurance and Indemnification

Prior to the Execution Date, and as may be required pursuant to any Permit or Developer Regulatory Approval, Developer (or Project Company) will obtain, maintain, and pay for such insurance as may be required by the Agreement and to effect the provisions of the indemnification sections herein. The coverage of such policies is set forth below.

B. Insurance Certificates

Upon request by Buyer, Developer shall (or shall cause the Contractor or the Project Company to) furnish certificates of insurance to Buyer evidencing that the insurance required below is in force and effect, whether such policy is that of Developer, Project Company, or Contractor. Upon request by Buyer, Developer shall (or shall cause the Contractor or the Project Company to) provide new, replacement certificates, evidencing the procurement of successor policies to the expiration of each required policy for so long as this Agreement is in effect.

C. Required Insurance and Limits of Liability

Prior to the Execution Date, and as may be required pursuant to any Permit or Developer Regulatory Approval, and until Final Completion, Developer, Project Company or Contractor, as the case may be, shall obtain and maintain in force and effect, at Developer's sole expense, insurance of the following types and amounts from insurance companies authorized to engage in the business of insurance in the state(s) in which Work will be performed, and rated by AM Best's A – VII (or equivalent rating from such other nationally recognized insurer rating firm such as S&P, Fitch, or Moody's) or better:

(i) WORKERS' COMPENSATION INSURANCE

(A) Developer (to the extent Developer employs any Person) and Contractor shall carry Worker's Compensation Insurance affording statutory benefits in accordance with all requirements of the applicable worker's compensation laws in the state(s) in which the Work will be performed and covering Developer's and Contractor's employees.

(B) If the exposure exists and Developer's and/or Contractor's performance of the Work involves work on navigable waters, Developer shall also obtain and maintain in force insurance complying with the U.S. Longshoreman's and Harbor Worker's Act, the Outer Continental Shelf Act, and covering Jones Act liability.

(ii) EMPLOYER'S LIABILITY INSURANCE

(A) Developer and Contractor shall carry Employer's Liability Insurance with limits of not less than [$1,000,000] per accident or disease; [$1,000,000] disease-each employee; [$1,000,000] disease-policy limit.

(iii) FEDERAL EMPLOYERS LIABILITY ACT (FELA) INSURANCE

(A) If a railroad exposure exists, any railroad employee contracted by Developer and/or Contractor to engage in the construction or work on railroads shall be covered under the Federal Employers Liability Act of 1908 for injuries.

(iv) COMMERCIAL GENERAL LIABILITY INSURANCE

(A) Developer and Contractor shall carry Commercial General Liability Insurance, including coverage for bodily injury and property damage, personal and advertising injury, the products-completed operations hazard, insured contracts, and, if applicable, contractual liability-railroads (CG 24 17) or equivalent, applicable in all states in which the Work is to be performed, on a form no less broad that that promulgated by the Insurance Services Office dated 2004 or thereafter, and with limits of not less than:

Each Occurrence	[$1,000,000]
General Aggregate	[$2,000,000]
Products-Completed Operations Aggregate	[$2,000,000]
Personal and Advertising Injury	[$1,000,000]

(v) BUSINESS AUTOMOBILE LIABILITY INSURANCE

(A) Contractor shall carry Business Automobile Liability Insurance on a form no less broad than that promulgated by the Insurance Services Office dated 1985 or thereafter, will limits of not less than [$1,000,000] combined single limit for each accident and covering owned (if any), hired or leased, and non-owned autos.

(vi) EXCESS OR UMBRELLA LIABILITY INSURANCE

(A) Developer and Contractor shall carry Excess or Umbrella Liability Insurance applying excess of Employer's Liability Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance with limits of not less than [$20,000,000] per occurrence and in the aggregate.

(vii) MARINE LIABILITY INSURANCE

(A) If a marine liability exposure exists, Developer and/or Contractor shall carry Marine Liability Insurance, including Hull and Machinery Insurance, to include collision liability coverage with sistership clause un-amended (assuming collision coverage is not provided by P&I insurance), with limits of liability not less than the full value of all vessels used in performing the Work, and without navigational limitations impeding performance of the Work. If vessels will engage in towing operations, such insurance shall include full towers' liability with sistership clause un-amended.

(B) If a marine liability exposure exists, Developer and/or Contractor shall carry Marine Liability Insurance, including Protection and Indemnity (P&I) Insurance evidenced through an entry with an international P&I Club or, alternatively, coverage under form SP-23, such coverage to include, in either case, liability coverage for collision, towing, seepage, pollution, contamination and cleanup, and to include coverage extensions for marine contractual liability, removal of wreck and debris, with a limit of liability of not less than [$10,000,000] any one accident or occurrence and in the aggregate.

If P&I coverage is not provided by a P&I Club, Developer and/or Contractor shall also carry vessel pollution insurance with the Water Quality Insurance Syndicate (WQIS), or its equivalent, to include coverages for liability under those U.S. statues applicable to pollution from operations in the U.S. waters, including the Gulf of Mexico, with a limit of liability of not less than [$5,000,000] any one accident or occurrence and in the aggregate.

(C) If Developer, Project Company and/or Contractor will use non-owned watercraft under a time charter agreement for the Work, then Developer and/or Contractor, as applicable, shall also carry Charterer's Legal Liability Insurance or Comprehensive General Liability Insurance with non-owned watercraft exclusions deleted, with a limit of liability of not less than $5,000,000 any one accident or occurrence and in the aggregate.

(VIII) POLLUTION LIABILITY INSURANCE

(A) Contractor shall carry Pollution Liability Insurance in the form of Contractor's Pollution Liability (CPL) Insurance for sudden and accidental, and gradual, pollution conditions, arising directly or indirectly from the Work or from Contractor's operations with limits of not less than [$5,000,000] per pollution event or claim and in the aggregate. Contractor's CPL Insurance shall provide Developer and Buyer with additional insured status, a waiver of, and notice of cancellation with thirty (30) days' written notice (except ten (10) days for non-payment of premium).

(B) Contractor's CPL insurance shall remain in full force for not less than two (2) years after completion of the Work, shall not exclude damage to Buyer's property, shall not exclude liability assumed or indemnified for under this Agreement, and shall include coverage for each of the following:

Completed Operations;

All premises where the Work will be performed, extending to pollution emanating from the premises to adjacent or other property or waterways;

Bodily Injury (including death), Property Damage and Environmental Cleanup Costs, including for mold, fungi, legionella, and silt and sedimentation. The coverage must apply to all premises and extend to pollution emanating from premises;

Natural Resources Damages;

Fines and Penalties to the extent insurable under governing Law;

Transportation (by owned or non-owned vehicles) of any waste, including loading or unloading, from jobsites to the final disposal location, as well as to any temporary storage location or transshipment or transfer sites; and

Disposal locations, whether final or temporary, covered as non-owned disposal sites.

(ix) PROFESSIONAL LIABILITY INSURANCE

(A) Developer or Contractor shall carry Professional Liability Insurance covering tortious errors and omissions in the performance of the Work, and not excluding damage to Buyer, with limits of not less than [$1,000,000] per claim and in the aggregate.

(x) RAILROAD PROTECTIVE LIABILITY INSURANCE

(A) If a railroad exposure exists, Developer and/or Contractor shall carry Railroad Protective Liability Insurance with limits of liability of not less than[$2,000,000] per claim and [$6,000,000] in the aggregate or limits as specified by the railroad.

(xi) PROPERTY AND BUILDER'S RISK INSURANCE

(A) Developer shall obtain and maintain in force property insurance covering the entire Work prior to commencing the Work and until Mechanical Completion. Such insurance shall be written in the amount at least equal to the initial contract sum as well as subsequent modifications of that sum (subject to usual and customary policy sublimits for certain perils / coverages). The insurance shall apply on a replacement cost basis or completed value form (including foundations and other property below the surface of the ground).

(B) Such insurance shall provide coverage to the same extent generally available on commercially reasonable terms for similar work, and shall include coverage for loss during the ordinary course of transit and/or during offsite storage. Buyer, Developer, Contractor and Subcontractors shall be included as insureds. Any insured loss shall be payable to Buyer and Developer as their interests may appear.

(C) Such property insurance shall have the following minimum requirements and other customary coverage in amounts and on terms and conditions as described below:

Coverage shall be afforded from the point of groundbreaking for the Project and through the Mechanical Completion Date;

The insurance shall be written to cover all risks of physical loss except those specifically excluded in the policy and shall insure at a minimum the perils of fire, lightning, flood, earth movement, windstorm, hurricane, hail, explosion, machinery breakdown, marine cargo (to the extent exposure exists) inland transit;

Coverage shall be provided for the cost of removing debris including demolition as may be made legally by the operation of law, ordinance or regulation in an amount that is reasonable and customary for projects of the type of the Project;

Policy shall include as insured property scaffolding, false work and temporary buildings located at the site, as applicable;

Off-site storage coverage with a per occurrence limit sufficient to cover off-site storage of equipment and materials but in an amount not less than [$100,000];

Transit coverage with a per occurrence limit of the full insurable value of any single shipment;

Coverage for operational testing and startup in an amount not less than full replacement value of the Project for all assets related to the Project with cover running continuously for machinery breakdown from the beginning of testing until Mechanical Completion; and

Any and all deductibles or self-insured retentions of all insurance policies required hereunder shall be assumed by, for the account of and at the Developer's or Contractor's, as the case may be, sole risk and expense and shall not be billed to or payable by Buyer or its direct and indirect subsidiaries and affiliates, including limited liability companies. All such policies may have deductibles of not greater than [$250,000] per loss except as respects natural catastrophe perils.

(D) Developer or Contractor shall provide property insurance on an 'all risk' form covering all property, tools, equipment and machinery used by Developer or Contractor in the performance of the Work (whether owned, leased, rented or borrowed) at full replacement cost value and containing a waiver of subrogation in favor of Buyer; provided, that Contractor may self-insure with respect to the above requirement regarding tools and equipment. In either case, insurance or self-insurance, neither Developer nor Contractor may seek recovery from Buyer for damaged or lost property, tools, equipment or machinery used by Developer or Contract in the performance of the Work.

The forgoing required insurance is the minimum insurance required by this Agreement. Developer may, in its sole discretion, procure additional insurance or higher limits of liability at Developer's sole expense.

D. Buyer To Be Named An Additional Insured

To the extent allowed by law, the Commercial General Liability Insurance, Business Automobile Liability Insurance, and Excess or Umbrella Insurance, as required above, shall be endorsed to provide that Buyer, together with its owned or controlled subsidiaries and affiliates, and their respective directors, officers and employees (collectively, the "Additional Insureds"), are granted status as additional insureds for liability arising out of the Work, with coverage not limited to liability caused by Developer or Developer's fault, and providing coverage for the Additional Insureds' fault or vicarious liability no less broad than one or the other of the following alternatives: (1) the coverage afforded to the named insured under the policy for liability arising out of the Work; or (2) the coverage afforded by the inclusion of both Insurance Services Office Additional Insured Endorsements CG 20 33 07 04 and CG 20 37 07 04, or equivalents.

The insurance policies required by Commercial General Liability Insurance and Business Automobile Liability Insurance, above, shall provide that the Additional Insureds are covered on a primary basis. Also, the insurance policies required by Commercial General Liability Insurance, Business Automobile Liability Insurance, and Excess or Umbrella Liability Insurance, above, shall also be endorsed to provide that coverage for the Additional Insureds does not apply excess of other insurance coverage available to the Additional Insureds, and that Developer's insurers will not seek contribution or recovery from such other insurance as may be available to the Additional Insureds.

E. Insurance Required of Subcontractors

Developer shall require Contractor and all Subcontractors who will perform any of the Work to obtain the same insurance and limits of liability as required by Workers' Compensation Insurance, Employer's Liability Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance above. Developer shall require Contractor and all Major Subcontractors who will perform any of the Work to obtain the same insurance and limits of liability as required by Excess or Umbrella Liability Insurance above and all other Subcontractors who will perform any of the Work to obtain Excess or Umbrella Liability Insurance with limits of not less than [$5,000,000] per occurrence and in the aggregate; provided, that if any such Subcontractor does not carry Excess or Umbrella Liability Insurance meeting such requirements but does carry Excess or Umbrella Liability Insurance meeting generally accepted industry standards for the scope of work to be performed by such Subcontractor, such Subcontractor's coverage shall be deemed acceptable. Developer or Contractor shall also require all such Subcontractors to cause their insurers to waive subrogation to the same extent as required of Buyer's insurers by the following provision, Waiver of Subrogation in Favor of Buyer.

F. Waiver of Subrogation in Favor of Buyer.

The Parties intend that none of Developer's insurers shall subrogate against Buyer, or any of its owned or controlled subsidiaries or affiliates, or their respective directors, officers or employees. Accordingly, Developer agrees to cause its insurers to waive subrogation against Buyer and all such subsidiary or affiliated entities and persons. The foregoing release is effective even if Developer fails to obtain the required insurance.

G. Notice of Cancellation.

Notice of cancellation shall be provided with thirty (30) days' written notice except ten (10) days for non-payment of premium.

H. Notice of Impairment of Limits

Developer shall give written notice to Buyer no later than seven (7) days after the date on which an impairment of an aggregate limit, due to the payment of a claim or defense expense, reduces the available aggregate limit to an amount 50% or less than the aggregate limit required above. If Developer's excess insurance will not drop down and comply with the insurance requirements, Buyer may require reinstatement of an impaired aggregate limit up to the amount required.

I. Information Concerning Buyer's Insurance Program

If Buyer has questions concerning Developer's casualty insurance program, Developer agrees to promptly answer them. Complete, true and correct copies of each policy required above shall be furnished to Buyer promptly upon Buyer's request, but Developer may redact payroll, premium, and other confidential information not related to the Project. Developer agrees to cooperate with Buyer, and with Buyer's insurance broker, in the event Buyer elects to seek or obtain additional insurance benefiting Buyer.

J. Developer's Compliance with Policy Conditions

Developer shall comply with and not violate or knowingly permit to be violated any condition of the insurance policies required above. Developer agrees to give its insurers timely written notice of all occurrences, accidents or claims arising out of the Work, with copy to Buyer.

K. Developer's Payment of Premiums, Deductibles and SIRs

Developer, not Buyer, shall be responsible for any and all policy premiums, deductibles, or self-insured retentions payable in connection with Developer's insurance, including the insurance required above.

L. Non-Waiver – No Limitation of Buyer's Rights

Developer unilaterally agrees to comply with the provisions of this Appendix L-1. Accordingly, Buyer's knowledge concerning deficiencies in Developer's insurance, including non-compliance with this Appendix shown by any insurance certificate or other information furnished to Buyer, shall not affect Buyer's rights and shall not result in a waiver or otherwise limit or impair Buyer's remedies for Developer's failure to comply with the requirements of this Appendix.

Nothing contained in this Appendix shall restrict, limit, impair or waive Buyer's rights or Developer's duties under the other terms of this Agreement or under applicable Law. The cancellation, expiration, or exhaustion of any of the insurance required shall not preclude Buyer from recovery against Developer for any liability arising under this Agreement or Law.

M. Term of Insurance Requirement

All of the foregoing insurance requirements shall survive the termination of this Agreement. All required insurance shall continue for at least thirty (30) days after final completion of the Work, to include the performance of all warranty work.

In addition, Developer shall maintain in force and effect any required claims-made coverage for a minimum of two (2) years after final completion of the Work and shall purchase an extended reporting period, or "tail coverage", if necessary to comply with this requirement.

Appendix L-2

BUYER INSURANCE

A. Insurance and Indemnification

After Closing, Buyer will or will cause the Project Company to obtain, maintain, and pay for such insurance as may be required by the Agreement and to effect the provisions of the Indemnification section herein. The coverage of such policies is set forth below.

B. Insurance Certificates

Upon request by Developer, Buyer shall furnish certificates of insurance to Developer evidencing that the insurance required below is in force and effect. Upon request by Developer, Buyer shall provide new, replacement certificates, evidencing the procurement of successor policies to the expiration of each required policy for so long as this Agreement is in effect.

Buyer warrants the accuracy of all information shown on each certificate furnished to Developer by Buyer or on Buyer's behalf by Buyer's broker or other representative.

C. Required Insurance and Limits of Liability

After Closing, Buyer shall or shall cause Project Company to obtain and maintain in force and effect, at Buyer's sole expense, insurance of the following types and amounts from insurance companies authorized to engage in the business of insurance in the state(s) in which Work will be performed, and rated by a Best's A – VII or better:

(i) COMMERCIAL GENERAL LIABILITY INSURANCE

(A) Buyer shall carry Commercial General Liability Insurance, including coverage for bodily injury and property damage, personal and advertising injury, the products-completed operations hazard, insured contracts, and contractual liability-railroads (CG 24 17), applicable in all states in which the Work is to be performed, on a form no less broad that that promulgated by the Insurance Services Office dated 2004 or thereafter, and with limits of not less than:

Each Occurrence	[$1,000,000]
General Aggregate	[$2,000,000]
Products-Completed Operations Aggregate	[$2,000,000]
Personal and Advertising Injury	[$1,000,000]

(ii) BUSINESS AUTOMOBILE LIABILITY INSURANCE

(A) Buyer shall carry Business Automobile Liability Insurance on a form no less broad than that promulgated by the Insurance Services Office dated 1985 or thereafter, will limits of not less than [$1,000,000] combined single limit for each accident and covering owned, hired or leased, and non-owned autos.

(iii) EXCESS OR UMBRELLA LIABILITY INSURANCE

(A) Buyer shall carry Excess or Umbrella Liability Insurance applying excess of Employer's Liability Insurance, Commercial General Liability Insurance, and Business

Automobile Liability Insurance with limits of not less than [$10,000,000] per occurrence and in the aggregate.

(iv) PROPERTY INSURANCE

(A) Buyer shall obtain and maintain in force all-risk property insurance applying on a full replacement cost basis or completed value form (including foundations and other property below the surface of the ground). Such insurance policy shall become effective as of Mechanical Completion.

(B) Such property insurance shall have the following minimum requirements and other customary coverage in amounts and on terms and conditions as described below:

The insurance shall be written to cover all risks of physical loss except those specifically excluded in the policy and shall insure at a minimum the perils of fire, lightning, flood, earth movement, windstorm, hurricane, hail, explosion, machinery breakdown, marine cargo, inland transit, and

Coverage shall be provided for the cost of removing debris including demolition as may be made legally by the operation of law, ordinance or regulation in an amount not less than full replacement value of the Project.

The forgoing required insurance is the minimum insurance required by this Agreement. Buyer may, in its sole discretion, procure additional insurance or higher limits of liability at Buyer's sole expense.

]]

APPENDIX M

CONTRACTOR'S SAFETY ASSURANCE PROGRAM

[To be attached prior to Closing]

APPENDIX N

N-1: FORM OF CHANGE ORDER

N-2: FORM OF CHANGE ORDER REQUEST

N-3: FORM OF CHANGE ORDER NOTICE

[See separate attachments]

PERFORMANCE GUARANTEES

Testing Frequency and Costs: The Performance Guarantee Tests will be run for the purpose of achieving Substantial Completion and Final Completion at Developer's sole cost and expense. In the event the Performance Guarantee Tests fail to achieve the Guaranteed Rated Energy Capacity or Guaranteed Power Capacity, Developer shall have the right to re-test and shall have the right to make adjustments to the Project Equipment to remedy any deficiencies between test attempts. Purchaser has the right to request additional Performance Guarantee Tests. No material modifications to the plant will be permitted between Purchaser's request and the performance of an additional Performance Guarantee Test, but maintenance can be performed to address issues that have occurred subsequent to a previous Performance Guarantee Test or are required to ensure equipment is capable and set-up properly for a Performance Guarantee Test. Purchaser shall be responsible for all costs incurred by conducting any additional Performance Guarantee Tests unless a Performance Guarantee Test demonstrates that Developer has failed to achieve any of the Performance Guarantees, in which case, Developer will be responsible for all costs of such Performance Guarantee Tests until Developer demonstrates the Project meets the Performance Guarantees. Purchaser shall be responsible for any costs associated with purchase or supply of power for the purpose of charging the Project for all Performance Guarantee Tests and Project Commissioning.

Test Records: Developer shall record the results of each Performance Guarantee Test, provide all raw data, records and results associated with each Performance Guarantee Test, and submit a testing report detailing all results and findings of each Performance Guarantee Test to Purchaser within eight (8) Business Days following completion of such Performance Guarantee Test. During the performance of each Performance Guarantee Test, the Project shall be functioning in a manner to permit Purchaser to remotely monitor, observe and independently verify the performance of the Project through the Project's remote monitoring and control systems.

For the purposes of the Performance Guarantee Tests, the following metering configuration is assumed. If alternate auxiliary power arrangements are used, the Performance Guarantee Tests below shall be changed accordingly.

1. Capacity Guarantee

The "**Guaranteed Rated Energy Capacity**" shall mean the guaranteed energy capacity (MWhAC) delivered over a full continuous discharge of the Project at the Guaranteed Power Capacity (MW) as set forth in the applicable Subsequent Purchase Order.

The "**Energy Capacity**" shall be defined as:

Energy Capacity = MVD

Where the following terms are defined as:

MV_D = Medium Voltage Main Meter reading during discharge cycle ("Gross Metering" in the metering configuration)

AX_D = Auxiliary Meter reading during the discharge cycle ("Aux Metering" in the metering configuration)

MV_C = Medium Voltage Main Meter reading during charge cycle ("Gross Metering" in the metering configuration)

AX_C = Auxiliary Meter reading during the charge cycle ("Aux Metering" in the metering configuration)

AXM = Maximum auxiliary energy consumed based on nameplate rating of the auxiliary power transformer(s)

The "**Guaranteed Power Capacity**" shall mean the guaranteed Power Capacity set forth in the applicable Subsequent Purchase Order. The "**Power Capacity**" is defined as the Energy Capacity divided by the measured time required for discharge of the Guaranteed Rated Energy Capacity. The metered instantaneous power shall be within +/- 2% of the guaranteed power for the duration of the guaranteed power capacity test, with infrequent momentary excursions from this band being acceptable.

Energy Capacity and Power Capacity shall be calculated by the following testing procedure:

i. Rest 2 hours with cell temperatures at 25-35 °C.
ii. Charge the batteries with 0.25 cp to its cut-off voltage, then charge via constant current – constant voltage method to full charge. Record the AC energy for both the Gross Metering (MV_C) and the Aux Metering (AX_C)
iii. Allow batteries to rest for up to 30 minutes
iv. Discharge the batteries with 0.25 cp to its cut-off voltage to starting SOC using constant current method. Record the AC energy for both the Gross Metering (MV_D) and the Aux Metering (AX_D)
v. Allow batteries to rest for up to 30 minutes
vi. Repeat steps (ii) through (iv) two (2) times in total

The "**Energy Capacity**" is calculated as

$$E_D = max\{MV_{D1} + AX_{D1} - AXM_1, MV_{D2} + AX_{D2} - AXM_2, MV_{D3} + AX_{D3} - AXM_3\}$$

2. <u>Availability Guarantee</u>

The Project availability shall be at least ninety-eight percent (98%) for a period of fifteen (15) Days of operation (the "**Reliability Run Period**").

"**Availability**" shall be calculated based upon the following formula:

- PH = period hours
- PMH = period planned maintenance hours (zero for the Reliability Run Period)
- GPC = Guaranteed Power Capacity
- PC = Available power capacity (MW) defined as battery power capability on-line and available for operation in either charge or discharge
- GEC = Guaranteed Rated Energy Capacity
- AC = Available energy capacity (MWh) defined as the battery energy storage capacity online and available for operation in either charge or discharge
- PAC = Period unavailable average capability, calculated as the normalized average of the maximum either energy storage capacity or power available during the period. A sample is not valid if during planned maintenance or a no-fault outage.

$$PAC = \sum \left(1 - min\left\{\frac{AC}{GEC}, \frac{PC}{GPC}\right\}\right)$$

- PFO = Period at-fault outage hours, defined as hours during which all or a portion of the available energy or power capacity is unavailable
- PNFO = Period of not at fault (excused) outage hours, defined as hours during which all or a portion of the available energy or power capacity is unavailable due to no fault of Developer provided equipment

Therefore, Availability is calculated as the following:

$$Availability = 100 * \frac{(PH - PMH - PNFO - \sum[PFO * PAC])}{(PH - PMH - PNFO)}$$

"**Guaranteed Availability Liquidated Damages**" shall be calculated in accordance with the following formula:

$$AvailabilityLD = GPC * max\left(0, \frac{GA - TA}{100}\right) * N_{DTA} * \frac{24\,hour}{Day} * \frac{\$100}{MW - hr}$$
$$+GPC * max\left(0, \frac{GA - CA}{100}\right) * N_{DCA} * \frac{24\,hour}{Day} * \frac{\$100}{MW - hr}$$

N_{DTA}	15 Days
GA	98%
TA	Tested Availability (%) = Maximum availability (%) in a 15 Day continuous period within the 30 Day window for the Reliability Run
CA	Corrective Period Availability (%) = Average availability (%) in the time period from end of the contractually defined Reliability Run to Day when the GA was met over a continuous 15 Day period
N_{DCA}	Number of Days from end of the Reliability Run to when the GA was met
GPC	Guaranteed Power Capacity

3. **Roundtrip Efficiency Guarantee**

Roundtrip Efficiency Test shall be conducted in conjunction with the Capacity Test.

The guaranteed Roundtrip Efficiency is denoted Use Case 1 in Appendix A.

The "**Roundtrip Efficiency**" is calculated as

$$RTE = max\left\{\frac{MV_{D1}+AX_{D1}}{MV_{C1}-AX_{C1}}, \frac{MV_{D2}+AX_{D2}}{MV_{C2}-AX_{C2}}, \frac{MV_{D3}+AX_{D3}}{MV_{C3}-AX_{C3}}\right\}$$

Where the following terms are defined as:

MV_D = Medium Voltage Main Meter reading during discharge cycle

MV_C = Medium Voltage Main Meter reading during charge cycle

AX_C = Auxiliary Meter reading during charge cycle

AX_D = Auxiliary Meter reading during discharge cycle

4. **Charge Rate Guarantee**

The Project, not including auxiliary power, must be designed and capable of charging at 100% of the proposed AC power and energy capacity at the POI.

The charge rate shall be determined as part of the Roundtrip Efficiency Test.

The charge rate shall be defined as the energy capacity divided by the time required to charge the Guaranteed Rated Energy Capacity.

Charge Rate Guarantee = $(MVC - AXC)/T_{CH}$

Where the following terms are defined as:

MVC = Medium Voltage Main Meter ("Gross Metering") reading during charge cycle

T_{CH} = Total Time to Charge

AXC = Auxiliary Meter ("Aux Metering") reading during charge cycle

5. Ramp Rate Guarantee

The Project shall be capable of responding to input signals and reaching 98% of full power charging and discharging within 200 ms. The testing shall correspond with the Response Time Guarantee. The Response Time Test is conducted concurrent with the Ramp Rate Test.

6. Response Time Guarantee

The Project shall be capable of responding to input signals and responding within 200 ms for the duration of the Developer Warranty Period.

The response shall be defined as the time required for the Project output to transition from no discharge to full rated discharge and from no charge to full rated charge when the breakers are closed and the system is on-line.

The start time shall be when the signal is received at the Project boundary, and the end time shall be when the measured discharge power reaches 100% ±2% of the rated power when the breakers are closed and the system is on-line.

7. Auxiliary Load Guarantee

The maximum instantaneous auxiliary power consumption of the Project will be lower than the rating of the auxiliary power transformer. Developer shall guarantee the maximum amount of auxiliary load to be consumed by the Project, expressed in kW, measured at the auxiliary load meter.

The auxiliary load test condition, including but not limited to ambient temperature, duty cycle will be agreed upon by Purchaser and Developer. Correction curves will be allowed with the concurrence of both Parties.

Auxiliary Load Guarantee = $(Max\{AXC, AXD, AXS\})$

Where the following terms are defined:

AXC = Auxiliary Meter maximum power reading during charge cycle

AXD = Auxiliary Meter maximum power reading during discharge cycle

AXS = Auxiliary Meter maximum power reading during standby

8. Power Factor Guarantee

In accordance with Appendix A, the power factor during charge and discharge operation shall be

controlled to ± 0.95 at the POI, except as may be provided in a Subsequent Purchase Order. The sizing and design requirements to meet Purchaser power factor requirements and any modifications to BESS sizing shall be defined in Appendix A.

Details of the testing will depend on Project reactive power constraints and will be determined as a part of Project design. Testing shall meet MRO MOD-025-02 including:

- At the real power rating equal to the real power rating of the Project (i.e. ±0.95 PF at 25 MW for a 25 MW rated site)
- Testing of active power under charge and discharge conditions

Testing shall be done with approval of and in coordination with WECC and Buyer.

9. Noise Guarantee

The noise shall be less than 85 decibels on the A weighted scale at a distance of 1 meter along the perimeter of the Project. Sound shall be measured at 1.5 meters above the grade elevation.

COMPLETION CRITERIA

[See separate attachment]

APPENDIX Q

LIST OF INDEPENDENT ENGINEERS

[TBD]

DRAFT

EXHIBITS

EXHIBIT A

FACILITIES DESCRIPTION

Battery Energy Storage Project to be located in [___], Idaho

Planned Storage Capacity:	[___]
Site location:	[___]
Interconnection:	[___]

EXHIBIT B

[Reserved]

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST (this "***Assignment***"), dated as of [__] (the "***Transfer Date***"), is by and between [___], a [___] ("***Assignor***"), and Idaho Power Company., an Idaho public utility company, d ("***Assignee***"). Assignor and Assignee are sometimes referred to herein collectively as the "***Parties***" and each individually as a "***Party***." Capitalized terms used but not defined in this Assignment have the meanings given to them in the BTA (as defined below).

Recitals

A. Assignor owns all of the interests of [___], a Delaware limited liability company (the "***Company***"), including (without limitation) all economic, membership and ownership rights, title and interests in the Company (collectively, the "***Membership Interests***"), including, but not limited to, the right to a share of the profits and losses and capital of the Company, the right to receive distributions from the Company, the right to inspect the Company's books and records, and the right to vote and manage the Company.

B. Assignor has agreed to sell to Assignee, and Assignee has agreed to purchase from Assignor, all of Assignor's Membership Interests in the Company, pursuant to that certain Build Transfer Agreement, dated as of [_____] (the "***BTA***").

NOW, THEREFORE, in consideration of the mutual covenants and agreements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee do hereby agree as follows:

AGREEMENT

1. Assignment. Assignor hereby sells, conveys, assigns, transfers and delivers to Assignee, and Assignee hereby purchases, assumes and acquires from Assignor, all of Assignor's rights, title and interest in, to and under all of the Membership Interests free and clear of Liens.

2. Effective Time. This Assignment shall be deemed effective for all purposes at 12:01 A.M. Eastern Time on the Transfer Date.

3. Further Assurances. At any time, or from time to time after the date hereof, Assignor and Assignee shall, at the other's reasonable request, and at the requesting Party's expense, execute and deliver such instruments of transfer, conveyance, assignment and assumption, in addition to this Assignment, and execute and deliver such other documents and take such other action as either of them may reasonably request in order to evidence the transfer effected hereby.

4. Amendments. No amendment to the terms and conditions of this Assignment shall be valid and binding on the Parties unless made in writing and signed by an authorized representative of each of the Parties.

5. Waiver. No waiver of any provision of this Assignment, or breach hereof, shall be effective unless it is in writing, signed by the Party waiving such provision.

6. Binding Effect; No Third-Party Beneficiaries. This Assignment shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing contained herein, express or implied, is intended to confer on any person or entity other than the Parties or their successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Assignment.

7. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

8. Entire Agreement. This Assignment constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Assignment, and supersedes all prior understandings and agreements, whether oral or written, between or among the Parties hereto with respect to the specific subject matter hereof.

9. Conflict of Terms. This Assignment is delivered pursuant to and is subject to the terms of the BTA. In the event of any conflict or ambiguity between the terms of the BTA and the terms of this Assignment, the terms of the BTA shall control.

10. Severability. Each provision of this Assignment is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Assignment.

11. Headings. The headings used in this Assignment are for purposes of convenience only and shall not be used in construing the provisions hereof.

12. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of a copy of this Assignment bearing an original signature by electronic mail in "portable document format" or by any other electronic means intended to preserve the original graphic appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

13. Recitals. The Recitals in this Assignment are hereby incorporated into this Assignment by reference.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have caused this Assignment to be executed as of the Transfer Date.

ASSIGNOR: [____]

By: _____ _____

Name: ___ _____

Title: __ _____

ASSIGNEE: IDAHO POWER COMPANY

By: _____ _____

Name: ___ _____

Title: ____ _____

EXHIBIT D

FORM OF BEGINNING OF CONSTRUCTION CERTIFICATE

[See separate attachment]

FORM OF LETTER OF CREDIT

[Letterhead of Creditworthy Bank]

[Date]

Irrevocable Standby Letter of Credit No. [__]

Beneficiary:

Idaho Power Company.
[_____]
[_____]
Attn: [*Name*]
[*Title*]
[*Phone*]

Applicant:

[_____]
[_____]
[_____]
[_____]
Attn: Credit Department

Dear Madam or Sir:

As the issuing bank, we, [Name of Issuing Bank] ("Issuer"), hereby establish for the account of [_____] ("Applicant"), Issuer's Irrevocable Standby Letter of Credit No. [_____] (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for an amount of [_____] United States Dollars (US$[_____]) (the "Available Amount"). Applicant has advised us that this Letter of Credit is issued in connection with the Build Transfer Agreement, dated as of [____], between Applicant and Beneficiary (as amended and as may be further amended, supplemented or otherwise modified). This Letter of Credit shall (i) become effective immediately for the term of one (1) year and shall expire on [__] (the "Expiration Date"), and (ii) is subject to the following:

1. Funds under this Letter of Credit shall be made available to Beneficiary against its draft drawn on Issuer in the form of Annex 1 hereto ("Draw Certificate"), accompanied by the original of this Letter of Credit and all amendments (if any), or photocopy of the original Letter of Credit for partial drawings, and presented at Issuer's office located at [____], attention [___] (or at any other office which may be designated by Issuer by written notice delivered to Beneficiary). All Draw Certificates must be signed on behalf of Beneficiary and the signatory must indicate his or her title or other official capacity. No other documents will be required to be presented. A presentation under this Letter of Credit may be made only on a day, and during hours, in which such office is open for business (a "Business Day"). If Issuer receives Beneficiary's presentation at such office on any Business Day, all in conformity with the terms and conditions of this Letter of Credit, Issuer will unconditionally honor the same by making payment in accordance with Beneficiary's payment instructions on or before the third (3rd) succeeding Business Day after such presentation. Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds. Partial and multiple drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided that the Available Amount shall be reduced by the

amount of each such drawing. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

2. This Letter of Credit shall terminate upon the earliest to occur of (i) Issuer's receipt of a notice in the form of Annex 2 hereto purportedly signed by an authorized officer of Beneficiary, accompanied by this Letter of Credit and all amendment, if any, for cancellation, (ii) Issuer's close of business at Issuer's aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the preceding Business Day. This Letter of Credit shall be surrendered to Issuer by Beneficiary upon the earlier of presentation or expiration.

3. It is a condition of this Letter of Credit that it shall be deemed to be automatically extended without amendment for additional one (1)-year periods, unless at least sixty (60) days prior to the Expiration Date Issuer sends Beneficiary notice by registered mail, return receipt requested or courier service or hand delivery at the above address that Issuer hereby elects not to consider this Letter of Credit extended for such additional period. However, in no even shall this Letter of Credit be automatically extended beyond [_____] (the "Final Expiration Date"). In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the Final Expiration Date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) days after the place for presentation reopens for business.

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

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

6. This Letter of Credit is non-transferable by Beneficiary. Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims Beneficiary may have against Applicant or Applicant may have against Beneficiary.

7. Communications with respect to this Letter of Credit shall be in writing and shall be addressed to Issuer at the address referred to in paragraph 1 above, and shall specifically refer to this Letter of Credit No. [_____].

Very truly yours,

[LOC Issuer]
Authorized Signatory

ANNEX 1

TO LETTER OF CREDIT

FORM OF DRAW CERTIFICATE

The undersigned ("Beneficiary") hereby certifies to [*ISSUING BANK*] ("Issuer"), with reference to Irrevocable Standby Letter of Credit No. [_____] (the "Letter of Credit") issued by Issuer in favor of the Beneficiary, as follows:

(1) The undersigned is the [_____] of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Draw Certificate on behalf of Beneficiary.

(2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary's presentation of the draft accompanying this Draw Certificate, for payment of [_____] United States Dollars (US$[_____]), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Available Amount (as in effect of the date hereof).

(3) The conditions for a drawing by Beneficiary are pursuant to:

a) The pending expiration of this Letter of Credit in twenty (20) or fewer New York banking days, Beneficiary has not received an extension of said Letter of Credit or other acceptable replacement Credit Support as required under the Build Transfer Agreement, dated as of [_____], between Account Party and Beneficiary, as the same may have been amended;

b) An "Event of Default" (as defined in the Build Transfer Agreement dated as of [_____], between Account Party and Beneficiary) that has occurred and is continuing with respect to Account Party, and Account Party's payment to Beneficiary of $[amount] is due and owing; or

c) The early termination of the Build Transfer Agreement, dated as of [_____], between Account Party and Beneficiary, pursuant to Section 2.11(a) thereof, and Account Party's payment to Beneficiary of $[amount] is due and owing pursuant to Section 2.11(g) thereof.

Wherefore, Beneficiary hereby demands payment of the above referenced amount under Letter of Credit No. [___]."

(4) Issuer is hereby directed to make payment to: [*insert wire instructions*]

Beneficiary Name and Address:

By: _____
Title: _____
Date: _____

(5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

(Signature page follows)

[*BENEFICIARY*]

By: _____
Title: _____
Date: _____

ANNEX 2

TO LETTER OF CREDIT

FORM OF NOTICE OF EARLY EXPIRATION

[Date]

[Beneficiary name and address]

Dear Madam or Sir:

Reference is made to that Irrevocable Standby Letter of Credit No. [____] (the "Letter of Credit") dated [_____] issued by [*insert Issuing Bank*] in favor of [_____] (the "Beneficiary"). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

This constitutes our notice to you pursuant to the Letter of Credit that the Letter of Credit shall terminate on [__] [*insert a date which is sixty (60) or more days after the date of this notice of early expiration*] (the "Early Expiration Date").

Pursuant to the terms of the Letter of Credit, the Beneficiary is authorized to draw (pursuant to one or more drawings), prior to the Early Expiration Date, on the Letter of Credit in an aggregate amount that does not exceed the then Available Amount (as defined in the Letter of Credit).

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this [____] day of [_____].

[ISSUING BANK]

By:_____
Name:
Title:

cc:

[Applicant name and address]

EXHIBIT F

EPC CONTRACT

[TBD]

FORMS OF MAJOR SUPPLY AGREEMENT

[TBD]

EXHIBIT H

FORM OF CONSENT

[TBD]

Respondent shall review and redline the following draft agreement into the submitted proposal for the specific product type and ownership structure as defined in this RFP.

This draft Exhibit F is not comprehensive and does not constitute a binding offer, shall not form the bases for an agreement by estoppel nor otherwise, and is not conditions upon each party's receipt of all requirement management approvals (including final credit and legal approval) and all regulatory approvals. Any actions taken by a party in reliance on the terms set forth in this working draft or on statements made during negotiations pursuant to this working draft shall be at that party's own risk. Until this agreement is negotiated, approved by management, executed, delivered, and approved by all required regulatory bodies, no party shall have any other legal obligations, expressed or implied, or arising in any other manner under this working draft or in the course of negotiations.

BATTERY STORAGE AGREEMENT

BETWEEN

_____

AND

IDAHO POWER COMPANY

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THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL) AND ALL REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED, DELIVERED AND APPROVED BY ALL REQUIRED REGULATORY BODIES, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.

BATTERY STORAGE AGREEMENT

THIS BATTERY STORAGE AGREEMENT (this "Agreement"), dated as of _____, 202_, (the "Effective Date"), is entered into between _____ (the "Seller") and Idaho Power Company, an Idaho corporation ("Idaho Power" or "Buyer"). Seller and Idaho Power are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party."

WHEREAS, Seller intends to construct, own, operate and maintain a battery energy storage system ("BESS") for the storage and discharge of electric energy located in [_____ ____], [Idaho] with a Storage Capacity (as defined below) of ____ MWh (the "Facility").

WHEREAS, Seller desires to sell, and Idaho Power desires to purchase, the Storage Product (as defined below) delivered by the Facility in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

SECTION 1
DEFINITIONS, RULES OF INTERPRETATION

Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein shall have the following meanings:

1.1 "Abandonment" means (a) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement, or (b) if after commencement of the construction, testing, and inspection of the Facility, and prior to the Commercial Operation Date, there is a complete cessation of the construction, testing, and inspection of the Facility for ninety (90) consecutive days by Seller and Seller's contractors, but only if such relinquishment or cessation is not caused by or attributable to

an Event of Default by Idaho Power, a request by Idaho Power, or an event of Force Majeure.

1.2 "AC" means alternating current.

1.3 "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise.

1.4 "Agreement" is defined in the opening paragraph hereto.

1.5 "Ancillary Services" has the meaning set forth in Idaho Power's Open Access Transmission Tariff as approved by FERC.

1.6 "Anything of Value" includes, but is not limited to, cash or a cash equivalent (including "grease", "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

1.7 "As-built Supplement" is a supplement to be added to Exhibit 16 that describes the Facility as actually built, pursuant to Section 7.1 and includes an American Land Title Association survey of the Premises.

1.8 "Auxiliary Load Test" has the meaning set forth in Exhibit 23.

1.9 "Book Value" means cost minus accumulated depreciation, and not deducting for debt or other encumbrances, calculated in accordance with generally accepted accounting principles consistently applied.

1.10 "Business Day" means any Monday through Friday except NERC recognized holidays beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Boise, Idaho.

1.11 "Calendar Quarter" means any of four quarters in a standard calendar year, specifically Quarter 1 is January 1 – March 31, Quarter 2 is April 1 – June 30, Quarter 3 is July 1 – September 30, and Quarter 4 is October 1 – December 31.

1.12 "Capacity Rights" means any current or future defined characteristic, certificate, tag, credit, reactive power, Ancillary Service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the energy storage and discharge of the Facility or the Facility's capability and ability to store and discharge energy. Capacity Rights are measured in MW and do not include any Tax Credits, or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

1.13 "Change of Control" means, with respect to Seller, any transaction or series of transactions following which Seller's Parent Entity no longer directly or indirectly (i) remains the owner

of more than fifty percent (50%) of the direct or indirect equity or voting interests of Seller which are not otherwise held by Seller's Lenders (excluding any Tax Equity Investors), or (ii) retains the power to control the management and policies of Seller; provided, however, that a Seller Permitted Transfer shall not be a Change of Control.

1.14 "Charge Rate Test" has the meaning set forth in Exhibit 23.

1.15 "Charging Energy" means the Energy provided to charge the Facility, which shall be charged solely from energy provided by Buyer from the System.

1.16 "Charging Notice" means the operating instruction, and any subsequent updates, given by Idaho Power to Seller, directing the Facility to charge at a specific MW rate to a specified Stored Energy Level, including in connection with a Guaranteed Storage Capacity Test, provided that any such operating instruction shall be in accordance with the Storage Operating Restrictions.

1.17 "Commercial Operation" means that not less than the Storage Capacity of the Facility is fully operational and reliable, the Guaranteed Roundtrip Efficiency has been met, all Performance Tests have otherwise been completed with results submitted to Idaho Power and the Facility is fully interconnected, fully integrated, and synchronized with the System, all of which shall be Seller's responsibility to receive or obtain, and without limiting Seller's other obligations under this Agreement, which occurs when all of the enumerated events listed in Section 4.2 (a) have occurred, and (b) remain simultaneously true and accurate as of the date and moment on which Seller gives Idaho Power written notice that Commercial Operation has occurred.

1.18 "Commercial Operation Date" means the day commencing at 00:01 hours, Mountain Time, following the day that all requirements of Section 4 have been completed and after the Seller requested Operation Date.

1.19 "Confidential Business Information" is defined in Section 25.1.

1.20 "Construction Progress Report" is defined in Section 3.2.1.

1.21 "Contract Interest Rate" means the lesser of (a) the highest rate permitted under Requirements of Law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate." If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with $10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid.

1.22 "Contract Price" means the applicable price, expressed in dollars per kW-month for the Storage Product, as set forth in Exhibit 5.

1.23 "Contract Year" means any consecutive 12-month period during the Term, commencing at 00:00 hours on the Commercial Operation Date or any of its anniversaries and ending at 24:00 hours on the last day of such 12-month period.

1.24 "Costs" means, with respect to the non-defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement and (b) all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with the termination of this Agreement.

1.25 "CPCN" means Certificate of Public Convenience and Necessity.

1.26 "Credit Requirements" means (a) three (3) years of audited financial statements, a view of the financial position and financial performance, financial statement analysis and financial trend analysis; (b) Debt Agency Ratings - a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of BBB+ or greater from S&P, or Baa1 or greater from Moody's, and if such ratings are split, the lower of the two ratings must be at least 'BBB+' or 'Baa1' from S&P or Moody's, respectively. Idaho Power performs a credit analysis, which considers both qualitative and quantitative factors, to determine whether potential Counterparties have satisfied the Credit Requirements.

1.27 "Default" is defined in Section 12.1.

1.28 "Default Security" is defined in Section 9.2.1.

1.29 "Delay Damages" means for each day in which Commercial Operation is not achieved after the Scheduled Commercial Operation Date, the amount equal to [$XX] for each MWh, prorated for fractional amounts thereof, of Storage Capacity below the Guaranteed Storage Capacity.

1.30 "Discharging Energy" means _____MWh in the first, full Contract Year, reduced by an annual degradation factor of ____ percent per Contract Year, measured at the Point of Delivery. If at Final Completion the Facility's Storage Capacity is less than the Guaranteed Storage Capacity, Discharging Energy shall be reduced proportionally per year for each MWh of Storage Capacity below the Guaranteed Storage Capacity. Seller acknowledges that Idaho Power will include Discharging Energy in Idaho Power's resource planning.

1.31 "Effective Date" is the date stated in the opening paragraph hereto which represents the date upon which this Agreement was fully executed by both Parties.

1.32 "Electric System Authority" means each of NERC, WECC, WREGIS, an RTO, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region, as such are applicable to the Seller or Idaho Power.

1.33 "Emissions Reduction Credit" means any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act.

1.34 "Energy" means [single][three][1]-phase, sixty (60)-hertz alternating current electrical energy (measured in MWh).

1.35 "Energy Imbalance Market" means the California Independent System Operator's Western Energy Imbalance Market.

1.36 "Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

1.37 "Event of Default" is defined in Section 12.1.

1.38 "Facility" is defined in the Recitals and is more fully described in attached Exhibit 2 and includes an AC-connected battery energy storage system, inverters, transformers, and performance monitoring instruments, associated electrical components, and civil infrastructure associated with the aforementioned components owned, controlled, operated and managed by Seller in connection with, or to facilitate, the storage, discharge, transmission, delivery, or furnishing of the Storage Product by Seller to Idaho Power and required to interconnect with the System, as well as Seller's interests in the Premises, including Leases and any fee owned real property.

1.39 "FERC" means the Federal Energy Regulatory Commission.

1.40 "Final Completion" means the Facility is fully operational and reliable, at the Guaranteed Storage Capacity, and fully interconnected, fully integrated, and synchronized with the Transmission Provider's System, modified if necessary to reflect the Storage Capacity and, if applicable, through completion of all the items set forth on the Final Completion Schedule.

1.41 "Final Completion Schedule" means the full list of all items to be completed in order to achieve Final Completion in accordance with Section 4.2 (Commercial Operation Date).

1.42 "First Operation Date" means the day commencing at 00:01 hours, Mountain Time, following the day that Seller has satisfied the requirements of Section 3 and after the Seller requested First Operation Date.

1.43 "Force Majeure" and "event of Force Majeure" are defined in Section 15.1.

[1] ***Note to Draft***: Include as applicable based on the design of the Project.

1.44 "Forced Outage" means NERC Event Types U1, U2 and U3, as set forth in attached Exhibit 6, and specifically excludes any Maintenance Outage or Planned Outage.

1.45 "Forward Settlement Amount" means, with respect to the non-defaulting Party, the net Losses and Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the termination of this Agreement plus all amounts then owed to the non-defaulting Party by the defaulting Party. If the non-defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Forward Settlement Amount shall be zero.

1.46 "Full Cycle" means the Facility is charged, then discharged at a MWh quantity equal to the energy capacity in MWh. For example, state of charge starts at one percent (1%), the Facility is charged to one hundred percent (100%) and then discharged to one percent (1%).

1.47 "Full Cycle Equivalent" means Partial Cycles that aggregate to one Full Cycle. For example, two fifty percent (50%) Partial Cycles or four twenty-five percent (25%) Partial Cycles is one (1) Full Cycle Equivalent.

1.48 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the early termination of this Agreement for the remainder of the Term that would have occurred but for the occurrence of the Event of Default and early termination, determined in a commercially reasonable manner.

1.49 "Generator Interconnection Agreement" or "GIA" means the large generator interconnection agreement entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

1.50 "Government Official" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

1.51 "Governmental Authority" means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Idaho Power or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

1.52 "Guaranteed Commercial Operation Date" means the date that is ninety (90) days after the Scheduled Commercial Operation Date.

1.53 "Guaranteed Roundtrip Efficiency" means a Roundtrip Efficiency during the Term of no less than [XX][2] %.

1.54 "Guaranteed Roundtrip Efficiency Test" has the meaning set forth in Exhibit 23.

1.55 "Guaranteed Storage Availability" means, in each Contract Year, Storage Availability equal to 98 % or greater.

1.56 "Guaranteed Storage Availability Test" has the meaning set forth in Exhibit 23.

1.57 "Guaranteed Storage Capacity" means the energy capacity of the Facility of [____] MWh measured over [four] hours by AC monitoring equipment, as more particularly described in Exhibit 2 and determined in accordance with the Guaranteed Storage Capacity Test.

1.58 "Guaranteed Storage Capacity Test" has the meaning set forth in Exhibit 23.

1.59 "Hazardous Materials" means any waste or other substance that is listed, defined, designated or classified as or determined to be hazardous under or pursuant to any environmental law or regulation.

1.60 "Idaho Power" and "Buyer" are defined in the opening paragraph, and explicitly excludes Idaho Power Transmission.

1.61 "Idaho Power's Cost to Cover" means the positive difference, if any, between (a) the time weighted average of the Market Price Index for each day for which the determination is being made, and (b) the Contract Price specified in Exhibit 5 in effect on such days, stated as an amount of dollars per kW-month. If on a given day the difference between (a) minus (b) referenced above is zero or negative, then Idaho Power's Cost to Cover shall be zero dollars ($0), and Seller shall have no obligation to pay any amount to Idaho Power on account of Section 7.12.3 or Section 12.2.1 with respect to such day.

1.62 "Idaho Power Indemnitees" is defined in Section 13.1.1.

1.63 "Idaho Power Representatives" is defined in Section 7.13.

1.64 "Idaho Power Transmission" means Idaho Power Company, an Idaho corporation, acting in its interconnection or transmission function capacity.

1.65 "Indemnified Party" is defined in Section 7.2.3.2.

1.66 "Indemnifying Party" is defined in Section 7.2.3.2.

1.67 "Interconnection Facilities" means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the System, including electrical transmission

[2] ***Note to Parties:*** *To be discussed.*

lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

1.68 "Interconnection Provider" means Idaho Power Transmission.

1.69 "Inverter" means the equipment installed at the Facility to convert direct current to AC, as described in Exhibit 2.

1.70 "IPUC" means the Idaho Public Utilities Commission.

1.71 "IRP" means Idaho Power's Integrated Resource Plan.

1.72 "ITC" means the investment tax credit established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

1.73 "kW-month" means kilowatts per month.

1.74 "Leases" means the memoranda of lease and redacted leases recorded in connection with the development of the Facility, as the same may be supplemented, amended, extended, restated, or replaced from time to time.

1.75 "Lender" means an entity lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax equity investor, backleverage financing or credit derivative arrangement) to Seller or Seller's Affiliates (a) for the construction, term or permanent financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) for any development financing, bridge financing, credit support, and related credit enhancement in connection with the development, construction or operation of the Facility; or (d) for the purchase of the Facility and related rights from Seller.

1.76 "Letter of Credit" means an irrevocable standby letter of credit in a form reasonably acceptable to Idaho Power, naming Idaho Power as the party entitled to demand payment and present draw requests thereunder that:

1.76.1 is issued by a Qualifying Institution;

1.76.2 by its terms, permits Idaho Power to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

1.76.3 permits Idaho Power to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) days prior to its stated expiration date;

1.76.4 permits Idaho Power to draw the entire amount available thereunder if such letter of credit is not increased or replaced as and when provided in Section 9;

1.76.5 is transferable by Idaho Power to any party to which Idaho Power may assign this Agreement; and

1.76.6 shall remain in effect for at least ninety (90) days after the end of the Term.

1.77 "Liabilities" is defined in Section 13.1.1.

1.78 "Licensed Professional Engineer" means a person proposed by Seller and acceptable to Idaho Power in its reasonable judgment who (a) to the extent mandated by Requirements of Law is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the state of Idaho, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Seller and is not an employee of its members or Affiliates, other than with the prior written consent of Idaho Power, for services previously or currently being rendered to Seller or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or a representative of a manufacturer or supplier of any equipment installed in the Facility.

1.79 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remainder of the Term that would have occurred but for the occurrence of the Event of Default and early termination of this Agreement, determined in a commercially reasonable manner. If Seller is the non-defaulting Party, "Losses" will exclude the loss, repayment or recapture of any Tax Credits. If Idaho Power is the non-defaulting Party, "Losses" will include Idaho Power's cost of replacing this Agreement with an agreement for new renewable capacity from a facility with similar technology that has not yet been constructed.

1.80 "Maintenance Outage" means NERC Event Type MO, as set forth in attached Exhibit 6, and includes any outage involving ten percent (10%) of the Facility's Storage Capacity that is not a Forced Outage or a Planned Outage.

1.81 "Market Operator" means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market.

1.82 "Market Price Index" means 82.4% of the monthly arithmetic average of each day's Intercontinental Exchange ("ICE") daily firm Mid-C Peak Avg and Mid-C Off-Peak Avg index prices in the month as follows:

The actual calculation being:

$$.824 * \left(\sum_{X=1}^{n} \{(\text{ICE Mid-C Peak Avg}_x * \text{HLH hours for day}) + (\text{ICE Mid-C Off-Peak Avg}_x * \text{LLH hours for day})\} / (n*24) \right)$$

where n = number of days in the month

If the ICE Mid-C Index prices are not reported for a particular day or days, prices derived from the respective averages of HLH and LLH prices for the immediately preceding and following reporting periods or days shall be substituted into the formula stated in this definition and shall therefore be multiplied by the appropriate respective numbers of HLH and LLH Hours for such particular day or days with the result that each hour in such month shall have a related price in such formula. If the day for which prices are not reported has in it only LLH Hours (for example a Sunday), the respective averages shall use only prices reported for LLH hours in the immediately preceding and following reporting periods or days. If the day for which prices are not reported is a Saturday or Monday or is adjacent on the calendar to a holiday, the prices used for HLH Hours shall be those for HLH hours in the nearest (forward or backward) reporting periods or days for which HLH prices are reported.

1.83 "Maximum Delivery Rate" means the maximum hourly rate of delivery of Discharging Energy in MWh from the Facility to the Point of Delivery, calculated on the basis of the Discharging Energy delivered in an hour accruing at an average rate equivalent to the actual Storage Capacity.

1.84 "Moody's" means Moody's Investor Services, Inc.

1.85 "Mountain Prevailing Time" or "MPT" means Mountain Standard Time or Mountain Daylight Time, as applicable in Idaho on the day in question.

1.86 "MW" means megawatt.

1.87 "MWh" means megawatt hour.

1.88 "NERC" means the North American Electric Reliability Corporation.

1.89 "Network Resource" is defined in the Tariff.

1.90 "Network Service Provider" means Idaho Power Transmission, as a provider of network service to Idaho Power under the Tariff.

1.91 "Noise Test" has the meaning set forth in Exhibit 23.

1.92 "Offer Notice" is defined in Section 8.2.

1.93 "Offered Interests" is defined in Section 8.4.1.

1.94 "Off-Peak Hours" or "LLH" [3]means the daily hours from hour ending 2300 – 0600 MPT, (8 hours), plus all other hours on all Sundays and NERC designated holidays.

[3]***Note to Parties*:** 1.93 "Off-Peak Hours" or "LLH" to be discussed.

1.95 "On-Peak Hours" or "HLH" [4]means the daily hours from hour ending 0700 - 2200 MPT, (16 hours), Monday through Saturday, excluding all hours on all Sundays and NERC designated holidays.

1.96 "Operations Report" is defined in Section 3.2.2.

1.97 "OPUC" means the Public Utility Commission of Oregon.

1.98 "Partial Cycle" means the Facility is charged and discharged at a MWh quantity less than one hundred percent (100%) of the Facility energy capacity. For example, State of Charge starts at fifty percent (50%), the Storage Facility is discharged to zero percent (0%) and then charged back to fifty percent (50%).

1.99 "Party" and "Parties" are defined in the opening paragraph hereto.

1.100 "Performance Tests" means the Guaranteed Storage Availability Test, the Guaranteed Storage Capacity Test, the Guaranteed Roundtrip Efficiency Test, the Charge Rate Test, the Ramp Rate Test, the Response Time Test, the Auxiliary Load Test, the Power Factor Test, and the Noise Test.

1.101 "Permits" means the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership or operation of the Facility or occupancy of the Premises, and all amendments, modifications, supplements, general conditions and addenda thereto.

1.102 "Planned Outage" means NERC Event Type PO, as set forth in attached Exhibit 6, and specifically excludes any Maintenance Outage or Forced Outage.

1.103 "Point of Delivery" means the point of interconnection between the Facility and the System, as specified in the Generator Interconnection Agreement and as further described in Exhibit 3.

1.104 "Power Factor Test" has the meaning set forth in Exhibit 23.

1.105 "Pre-COD Damages Payment" means liquidated damages in an amount equal to the amount of Project Development Security required to be provided hereunder, plus the Delay Damages Seller has paid to Buyer.

1.106 "Premises" means the real property on which the Facility is or will be located, as more fully described on Exhibits 9, 10 and 15.

1.107 "Project Development Security" is defined in Section 9.1.1.

1.108 "Prudent Electrical Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the independent electric power generation industry in the United States for BESS facilities of similar size and characteristics or any of the

[4] ***Note to Parties*:** 1.94 "On-Peak Hours" or "HLH" to be discussed.

practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.

1.109 "Qualified Operator" is (a) a partnership, corporation or limited liability company that demonstrates acceptable experience with operating a BESS facility, or (b) any other Person reasonably acceptable to Buyer.

1.110 "Qualifying Institution" means a United States commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof having assets of at least $10,000,000,000 (net of reserves) and a credit rating on its long-term senior unsecured debt of at least "A" from S&P and "A2" from Moody's.

1.111 "Ramp Rate Test" has the meaning set forth in Exhibit 23.

1.112 "Reporting Month" is defined in Section 7.10.1.

1.113 "Required Facility Documents" means the Permits and other authorizations, rights and agreements now or hereafter necessary for construction, ownership, operation, and maintenance of the Facility, and to deliver the Storage Product to Idaho Power in accordance with this Agreement and Requirements of Law, including those set forth in Exhibit 9.

1.114 "Requirements of Law" means any applicable and mandatory (but not merely advisory) federal, state and local law, statute, regulation, rule, action, order, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and wildlife protection and occupational safety and health).

1.115 "Response Time Test" has the meaning set forth in Exhibit 23.

1.116 "Restricted Period" is defined in Section 8.2.

1.117 "Restricted Transaction" is defined in Section 8.4.1.

1.118 "ROFO" is defined in Section 8.2.

1.119 "ROFO Period" is defined in Section 8.4.1.

1.120 "ROFO Seller" is defined in Section 8.4.1.

1.121 "Roundtrip Efficiency" means the round trip DC-to-storage-to-DC energy efficiency of the battery, or the fraction of energy put into the storage that can be retrieved, calculated in accordance with Exhibit 23.

1.122 "RTO" means any entity (including an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

1.123 "S&P" means Standard & Poor's Rating Group (a division of S&P Global, Inc.).

1.124 "Sanctioned Person" means any person (i) that is the target of Sanctions or owned or controlled by any such person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

1.125 "Sanctioned Territory" means any country or territory now or hereafter subject to comprehensive Sanctions.

1.126 "Sanctions" means any economic or trade sanctions administered or enforced by any Government Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community or, Her Majesty's Treasury or any, and each other sanctions authority which has jurisdiction in respect of any Party or the Facility.

1.127 "SCADA" means supervisory control and data acquisition.

1.128 "Scheduled Commercial Operation Date" means _____.

1.129 "Seller" is defined in the opening paragraph hereto.

1.130 "Seller Indemnitees" is defined in Section 13.1.2.

1.131 "Seller ROFO Notice" is defined in Section 8.4.1.

1.132 "Seller Uncontrollable Minutes" means, for the Facility in any month, the total number of minutes during such month during which the Facility was unable to deliver Discharging Energy to Idaho Power (or during which Idaho Power failed to accept such delivery) due to one or more of the following events, each as recorded by SCADA and indicated by electronic fault logs: (a) an emergency or Force Majeure event; (b) [reserved]; (c) the System operating outside the voltage or frequency limits defined in the applicable operating manual for the Inverters installed at the Facility; (d) Planned Outages, but in no event exceeding thirty six (36) hours per Contract Year consistent with such operating manual; (e) [reserved]; (f) a default by Idaho Power; provided, however, that if any of the events described above in items (a) through (e) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller's non-conformance with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

1.133 "Seller's Cost to Cover" means the positive difference, if any, between (a) the Contract Price specified in Exhibit 5, and (b) the time weighted average of the Market Price Index of Discharging Energy not purchased by Idaho Power as required hereunder. If on any given day the difference between (a) minus (b) referenced above is zero or negative, then Seller's Cost to Cover shall be zero dollars with respect to such day, and Idaho Power shall have no obligation to pay any amount to Seller on account of Section 12.2.2. For any days

prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (a).

1.134 "Seller's Parent Entity" means [_____].

1.135 "Senior Lenders" means Lenders being granted senior security interests on the Facility or its assets, or Seller or its equity, other than Affiliates of Seller.

1.136 "Storage Availability" shall be at least _____ percent (_____%), calculated in accordance with the Guaranteed Storage Availability Test.

1.137 "Storage Availability Damages" means a payment equal to the difference between (i) Storage Availability, calculated in accordance with Exhibit 23 and (ii) the Guaranteed Storage Availability, multiplied by [$150,000].

1.138 "Storage Availability Damages Cap" means _____ per year.

1.139 "Storage Capacity" means the maximum energy capacity of the completed Facility, measured in MWh over a [four] hour period, when operated in compliance with the Generator Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the BESS, as set forth in a written notice from Seller to Idaho Power delivered prior to the Commercial Operation Date and, if applicable, updated in a subsequent written notice from Seller to Idaho Power as required for Final Completion.

1.140 "Storage Capacity Damages" means a payment equal to the difference between (i) the Storage Capacity measured in accordance with Exhibit 23 and (ii) the Guaranteed Storage Capacity, multiplied by [$100/MWh].

1.141 "Storage Capacity Damages Cap" means _____.

1.142 "Storage Operating Restrictions" means those operating parameters and restrictions set forth in Exhibit 4.

1.143 "Storage Product" means the Discharging Energy, Capacity Rights, Storage Capacity, and Ancillary Services.

1.144 "Stored Energy Level" means, at a particular time, the amount of electric energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

1.145 "System" means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generation Interconnection Agreement.

1.146 "Tariff" means the Idaho Power FERC Electric Tariff Volume No. 11 Open Access Transmission Tariff, as revised from time to time.

1.147 "Tax Credits" means any state, local and/or federal production tax credit, tax deduction, and/or investment tax credit (including the ITC) specific to the production of renewable energy and/or investments in renewable energy facilities.

1.148 "Term" is defined in Section 4.1.

1.149 "Transmission Provider" means Idaho Power Transmission.

1.150 "WECC" means the Western Electricity Coordinating Council.

1.151 "WREGIS" means the Western Renewable Energy Generation Information System.

1.152 Rules of Interpretation.

1.152.1 General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to "Articles," "Sections," "Schedules," "Appendices" or "Exhibits" are to articles, sections, schedules, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity's or index's successors; (d) "herein," "hereof" and "hereunder" refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) "including" means "including, without limitation" or "including, but not limited to"; (h) all references to a particular law or statute mean that law or statute as amended from time to time; (i) all references to electric energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (j) the word "or" is not necessarily exclusive. Reference to "days" shall be calendar days, unless expressly stated otherwise herein.

1.152.2 Terms Not to be Construed For or Against Either Party. Each term hereof shall be construed according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

1.152.3 Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.152.4 Examples. Example calculations and other examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

1.152.5 Interpretation with FERC Orders. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its companion orders, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Interconnection Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the Generation Interconnection Agreement with the Interconnection Provider. Nothing herein is intended to make any statement about FERC jurisdiction in relation to the Seller.

1.153 Other Terms. The Parties acknowledge and agree that the Generator Interconnection Agreement shall be a separate and free standing contract and that the terms hereof are not binding upon the Interconnection Provider.

Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation hereunder. This Agreement shall not be construed to create any rights between Seller and the Interconnection Provider or between Seller and the Transmission Provider.

Seller expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from Idaho Power whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an Affiliate thereof. Seller acknowledges that Idaho Power, acting in its capacity as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider.

SECTION 2
REPRESENTATIONS AND WARRANTIES

2.1 Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

2.1.1 Organization. It is duly organized and validly existing under the laws of the State of its organization.

2.1.2 Authority. It has the requisite power and authority to enter this Agreement and to perform according to the terms hereof.

2.1.3 Corporate Actions. It has taken all corporate or entity actions required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

2.1.4 No Contravention. The execution and delivery hereof does not contravene any provision of, or constitute a default under, any indenture, mortgage, security

instrument or undertaking, or other material agreement to which it is a party or by which it is bound, or any valid order of any court, or any regulatory agency or other Governmental Authority having authority to which it is subject.

2.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

2.1.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of either Party's knowledge, threatened in writing against either Party or its members, with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened in writing against a Party, its members, or any Affiliate, the effect of which would materially and adversely affect the Party's performance of its obligations hereunder.

2.1.7 Eligible Contract Participant. It, and any guarantor of its obligations under this Agreement, is an "eligible contract participant" as that term is defined in the United States Commodity Exchange Act.

2.1.8 Not a Sanctioned Person. It is not a Sanctioned Person.

2.2 Seller's Further Representations and Warranties. Seller further represents, covenants, and warrants to Idaho Power that:

2.2.1 Authority. Seller (a) has (or will have prior to the Commercial Operation Date) all required regulatory authority to make wholesale sales from and purchases of Charging Energy for the Facility; (b) has the power and authority to own and operate the Facility and be present upon the Premises for the Term; and (c) is duly qualified and in good standing under the laws of the state of Idaho and each other jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

2.2.2 No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not and will not:

2.2.2.1 contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any of Seller's members;

2.2.2.2 require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are (i) set forth in Exhibit 9 or (ii) required in connection with the construction, operation, or maintenance of the Facility and expected to be obtained in due course;

2.2.2.3 result in a breach of or constitute a default under any provision of any security issued by any of Seller's members or managers, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder, or any material agreement, instrument or undertaking to which either Seller's members or any Affiliates of Seller's members is a party or by which the property of any of Seller's members or any Affiliates of Seller's members is bound, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder.

2.2.3 Required Facility Documents. All Required Facility Documents are listed on Exhibit 9. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, or will hold by the Commercial Operation Date (or such other later date as may be specified under Requirements of Law), and will maintain for the Term all Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises. Following the Commercial Operation Date, Seller shall promptly notify Idaho Power of any additional Required Facility Documents.

2.2.4 Delivery of Storage Product. On or before the Commercial Operation Date, Seller shall hold rights sufficient to enable Seller to deliver the Storage Product from the Facility to the Point of Delivery pursuant to this Agreement throughout the Term.

2.2.5 Control of Premises. Seller has all legal rights necessary for the Seller to enter upon and occupy the Premises for the purpose of constructing, operating and maintaining the Facility for the Term. All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibits 9 and 10. Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the Facility as valid for the Term. Upon request by Idaho Power, Seller shall provide copies of the memoranda of lease recorded in connection with the development of the Facility.

2.2.6 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts including engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller. In entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Idaho Power in connection with the transactions contemplated by this Agreement.

2.2.7 Verification. All information relating to the Facility, its operation and output and the Premises provided to Idaho Power and contained in this Agreement has been verified by Seller and is true and accurate.

2.3 No Other Representations or Warranties. Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter hereof.

2.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Section are made as of the Effective Date and deemed repeated as of the Commercial Operation Date. If at any time during the Term, a Party obtains actual knowledge of any event or information that would have caused any of the representations and warranties in this Section 2 to be materially untrue or misleading at the time given, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. If at any time a Party obtains actual knowledge that the representations and warranties in this Section 2 are not true, said Party shall provide written notice to the other Party. The notice required pursuant to this section shall be given as soon as practicable after the occurrence of each such event.

SECTION 3
CONDITIONS PRECEDENT TO TERM

3.1 Conditions to be granted First Operation Date. As a condition of the Buyer's acceptance of deliveries of the Storage Product from the Seller, the following conditions shall be satisfied.

3.1.1 Commission/Regulatory Approval. This Agreement is subject to, and the obligations of Buyer and Seller to purchase, sell and deliver Net Output, Green Tags and Capacity Rights hereunder shall only become fully effective upon the IPUC's approval of all terms and provisions hereof without change or condition, declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes, and approval of the accounting and regulatory treatment requested by Idaho Power in its application to the IPUC, all to the satisfaction of Buyer (the "IPUC Approval"); provided that, notwithstanding anything to the contrary herein, if the IPUC Approval has not been obtained on or prior to the date that is six (6) months after the date that the filings have been made with the IPUC for the IPUC Approval, the Parties agree to consult with each other in good faith for a period of thirty (30) days in the event of any such delay to evaluate whether, notwithstanding such delay, the Facility will achieve Commercial Operation by the Scheduled Commercial Operation Date; provided, further, that if notwithstanding the good faith efforts of the Parties they are not able to so agree, or if the Parties agree that the Facility will not timely achieve Scheduled Commercial Operation Date, then the Agreement may be terminated by Buyer. If IPUC Approval does not occur by the date that is twelve (12) months after the filing of this Agreement for IPUC Approval, then either Party will have a right to terminate this Agreement and

upon any such termination neither Party shall have any obligation to the other under this Agreement, except with respect to the terms and provisions hereof that expressly survive the termination of this Agreement.

3.1.2 Idaho Power will promptly (but in no event later than sixty (60) days following the Effective Date) submit applications with the IPUC for IPUC Approval and pay all costs associated with such filings. Following Idaho Power's filing of such applications for IPUC Approval, Idaho Power shall promptly apprise Seller of any material updates with respect thereto. As promptly as possible, but in any event no later than thirty (30) days, after the IPUC issues an order or other final determination with respect to an application for IPUC Approval, Idaho Power shall notify Seller thereof (providing a copy of such order or determination).

3.2 Idaho Power's Right to Monitor. After the Effective Date, Seller shall, and shall permit Idaho Power and its advisors and consultants to:

3.2.1 On and after the Execution Date through the Commercial Operation Date, by the tenth (10th) Business Day of each month, Seller will provide Buyer a monthly report for the prior month regarding development, financing and construction updates in the form attached hereto as Exhibit 18, the form of which may be reasonably revised by Buyer from time to time (the "Construction Progress Report").

3.2.2 Thirty (30) days prior to the expected Commercial Operation Date and thereafter from the Commercial Operation Date and throughout the Settlement Term of this Agreement, no later than the end of the month immediately following the month for which information is being reported, Seller shall provide Buyer with a monthly report for the prior month regarding material data pertaining to the operation of the Facility in the form of Exhibit 19, the form of which may be reasonably revised by Buyer from time to time (the "Operations Report"). Each Operations Report shall include, at a minimum, the following information for the Facility in such month: (i) A description of any Outages or other performance issues in the prior month; (ii) the Storage Availability calculated in accordance with Exhibit 23; and (iii) a description of any issues that could materially impact (ii).

3.2.3 Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the acquisition, design, financing, engineering, construction and installation of the Facility.

3.2.4 Monitor the status of the acquisition, Premises, land leasing, design, financing, engineering, construction and installation of the Facility and the performance of the contractors constructing the Facility.

3.2.5 Witness initial performance tests and other tests and review the results thereof; with Seller to make best efforts to provide Idaho Power five (5) Business Days'

advance written notice of each such major test. Seller shall provide Idaho Power with at least two (2) Business Days prior written notice of each such test.

3.2.6 Perform such examinations, inspections, and quality surveillance as, in Idaho Power's reasonable judgment, are appropriate and advisable to determine that the Facility has been properly commissioned and Commercial Operation and Final Completion have been achieved.

With respect to Idaho Power's right to monitor under this Section 3.2, (i) Idaho Power is under no obligation to exercise any of these monitoring rights, (ii) such monitoring shall occur subject to reasonable rules developed by Seller regarding Facility construction, access, health, safety, and environmental requirements, and (iii) Idaho Power shall have no liability to Seller for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Idaho Power with respect to the Facility or any contractor. Any review or monitoring of the Facility conducted by Idaho Power hereunder shall be performed in a manner that does not impede, hinder, postpone, or delay Seller or its contractors in their performance of the engineering, construction, design or testing of the Facility. Idaho Power shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 3.2, which representatives shall have authority to act for Idaho Power in all technical matters under this Section 3.2 as authorized by Idaho Power but not to amend or modify any provision hereof. A Construction Progress Report and Operations Report delivered pursuant to this Section 3.2 shall not constitute notice for any purpose under this Agreement, including with respect to any fact, circumstance, request, issue, dispute or matter included in such report. Seller does not herein grant Idaho Power the right to review, comment on or approve of the terms or conditions of any contract or negotiation between Seller and a third party, the terms and conditions of each such contract or negotiation being confidential and to be determined by Seller in its sole discretion. Conversely, nothing in this Agreement shall be construed to require Idaho Power to review, comment on, or approve of any contract between Seller and a third party and any such review, comment or approval by Idaho Power shall not constitute a waiver by Idaho Power or any of Seller's obligations under this Agreement or create any obligation or liability for Idaho Power.

SECTION 4
TERM AND COMMERCIAL OPERATION DATE

4.1 Term. This Agreement shall become effective on the Effective Date and, subject to earlier termination as provided in this Agreement, shall continue in full force and effect for a period of _____ Contract Years from the Commercial Operation Date (the "Term").

4.2 Commercial Operation Date. Seller will in good faith using commercially reasonable efforts seek to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date. The Commercial Operation Date shall occur after all the following conditions have been satisfied.

4.2.1 Idaho Power has received the Default Security, as applicable.

4.2.2 Seller shall notify Buyer of the Seller's proposed Commercial Operation Date, in written form no later than five (5) Business Days prior to the proposed Commercial Operation Date.

4.2.3 Seller shall provide to Idaho Power a certificate from a Licensed Professional Engineer licensed in the state of Idaho addressed to Idaho Power stating that Seller has (a) the Required Facility Documents including the material permits, consents and agreements necessary to operate and maintain the Facility and (b) obtained or entered into all Permits and Required Facility Documents. Seller must provide copies of any or all Required Facility Documents requested by Idaho Power.

4.2.4 Seller shall provide Idaho Power with documentation showing that Seller has obtained retail electric service for the Facility.

4.2.5 Idaho Power has received a certificate addressed to Idaho Power from a Licensed Professional Engineer stating that, in conformance with the requirements of the Generation Interconnection Agreement: (1) all required Interconnection Facilities have been constructed; (2) all required interconnection tests have been completed; and (3) the Facility is physically interconnected with the System in conformance with the Generation Interconnection Agreement and able to deliver electric energy consistent with the terms of this Agreement.

4.2.6 Idaho Power has received, addressed to Idaho Power from a Licensed Professional Engineer, an executed Engineer's Certification of Design & Construction Adequacy and an Engineer's Certification of Operations and Maintenance (O&M) Policy. These certificates will be in the form specified in Exhibit 11 but may be modified to the extent necessary to recognize the different engineering disciplines providing the certificates.

4.2.7 Idaho Power has received an opinion from a law firm or attorney licensed in the State of Idaho stating, after all appropriate and reasonable inquiry (1) Seller has obtained or entered into all Required Facility Documents; and (2) neither Seller nor the Facility are in violation of or subject to any liability under any Requirements of Law.

4.2.8 Idaho Power has received a certificate addressed to Idaho Power from an authorized officer of Seller (1) stating that Seller has completed all of its obligations under the Generation Interconnection Agreement.

4.2.9 Seller has satisfied its obligation to pay for any required Network Upgrades as a Network Resource pursuant to the Generation Interconnection Agreement (as those terms are defined in the Generation Interconnection Agreement).

4.2.10 Seller shall submit written proof to the Buyer of all insurance required in Section 14.

4.2.11 Seller has completed all Start-Up Testing in accordance with Exhibit 7.

4.2.12 Seller has completed all Performance Tests, submitted the results thereof to Idaho Power, and has achieved (i) the Guaranteed Storage Availability or paid all Storage Availability Damages in accordance with Section 4.5.5, (ii) the Guaranteed Storage Capacity or paid all Storage Capacity Damages in accordance with Section 4.5.5, and (iii) Guaranteed Roundtrip Efficiency.

4.2.13 Commercial Operation Date Notice. Seller shall provide written notice to Idaho Power stating when Seller believes that the Facility has achieved Commercial Operation accompanied by the certificates and opinions described above. Seller shall ensure that the Facility does not achieve Commercial Operation in any Calendar Quarter prior to the Calendar Quarter in which the Scheduled Commercial Operation Date falls.

4.2.14 Idaho Power shall have ten (10) Business Days after receipt of such written notice from Seller either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what Idaho Power reasonably believes has not been satisfied. If, within such ten (10) Business Day period, Idaho Power does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's written notice shall be the Commercial Operation Date. If Idaho Power notifies Seller within such ten (10) Business Day period that Idaho Power reasonably believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in Idaho Power's notice to the satisfaction of Idaho Power. In the event Idaho Power provides notice of deficiency with regards to the information submitted to establish the Commercial Operation Date, then the Commercial Operation Date will be the date upon which Seller has addressed the concerns stated in Idaho Power's notice to Idaho Power's reasonable satisfaction.

With respect to Sections 4.2.3 through 4.2.6 above, the certificate or opinion provided to Idaho Power must come from a Licensed Professional Engineer or, in the case of Section 4.2.7 above, an attorney that is not an employee of Seller (or any Affiliate) and has no financial interest in the Facility.

Notwithstanding the foregoing in this Section 4.2, the date for achieving each of the foregoing items shall be extended on a day for day basis for any delay due solely to Idaho Power's delay in taking, or failure to take, any action required of it hereunder in breach of this Agreement. These Commercial Operation Date requirements are to be used solely for purposes of determining when the Facility has achieved its Commercial Operation Date.

4.3 Condition Precedents to Commercial Operation. Seller covenants and agrees that before it achieves the Commercial Operation Date, it shall ensure that it has done all of the following, and Seller shall hold Idaho Power harmless from and against any failure of Seller to have done so:

4.3.1 All Facility systems necessary for the stable, safe, reliable and consistent operation of the installed Facility are substantially complete,

4.3.2 Any testing of the installed Facility required pursuant to the Interconnection Agreement(s) and Interconnection Provider documents and equipment supplier requirements have been successfully completed;

4.3.3 Seller has completed all of the Performance Tests and has achieved (i) the Guaranteed Storage Availability or paid all Storage Availability Damages in accordance with Section 4.5.5, (ii) the Guaranteed Storage Capacity or paid all Storage Capacity Damages in accordance with Section 4.5.5, and (iii) the Guaranteed Roundtrip Efficiency; and

4.3.4 the Facility is available for operation in all material respects in accordance with the Requirements of Law.

4.4 Continuing Obligations. Seller shall provide Buyer with the following during the Term of this Agreement:

4.4.1 At Buyer's request, Seller shall provide evidence that it is in compliance with the insurance requirements set forth in Section 14.

4.4.2 Seller shall maintain compliance and remain in good standing in all requirements of Sections 3 and 4 of this Agreement.

4.5 Commercial Operation Date Delay, Delay Damages, Storage Capacity Damages, Storage Availability Damages.

4.5.1 If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to Idaho Power Delay Damages from and after the Scheduled Commercial Operation Date up to, but not including, the date that the Facility achieves Commercial Operation. Delay Damages cease to accrue in the event of termination of this Agreement.

4.5.2 If the Facility does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Idaho Power may terminate this Agreement pursuant to Section 12.

4.5.3 If the Facility does not achieve the Guaranteed Roundtrip Efficiency, Idaho Power may terminate this Agreement pursuant to Section 12.

4.5.4 If the Facility achieves Commercial Operation based on less than the Guaranteed Storage Capacity, Seller shall pay to Idaho Power the Storage Capacity Damages, provided, Seller shall not be required to pay Storage Capacity Damages in excess of the Storage Capacity Damages Cap.

4.5.5 If the Facility achieves Commercial Operation based on less than the Guaranteed Storage Availability, Seller shall pay to Idaho Power the Storage Availability Damages, provided, Seller shall not be required to pay Storage Availability Damages in excess of the Storage Availability Damages Cap.

4.6 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that Idaho Power would incur due to Seller's delay in achieving Commercial Operation or failure to achieve the Guaranteed Storage Capacity or Guaranteed Storage Availability would be difficult or impossible to predict with certainty, and (b) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages, Storage Capacity Damages, and Storage Availability Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. The Parties agree that Delay Damages, Storage Capacity Damages, and Storage Availability Damages shall be Idaho Power's exclusive remedy for a delay in achieving Commercial Operation or failure to achieve the Guaranteed Storage Availability and Guaranteed Storage Capacity and believe that Delay Damages, Storage Capacity Damages, and Storage Availability Damages fairly represent actual damages. Subject to the foregoing sentence, this Section 4.6 shall not limit Seller's termination rights or the amount of damages payable to Idaho Power if this Agreement is terminated as a result of Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Any such termination damages shall be determined in accordance with Section 12.4.

4.7 Damages Invoicing. By the tenth (10^{th}) day following the end of the calendar month in which Delay Damages begin to accrue or Storage Capacity Damages or Storage Availability Damages are incurred, as applicable, and continuing on the tenth (10^{th}) day of each calendar month during the period in which Delay Damages accrue (and the following months, if applicable), Idaho Power shall deliver to Seller an invoice showing Idaho Power's computation of such damages and any amount due Idaho Power in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice and subject to Sections 11.2 and 11.3, Seller shall pay to Idaho Power, by wire transfer of immediately available funds to an account specified in writing by Idaho Power or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

SECTION 5
DELIVERIES OF STORAGE PRODUCT

5.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell and make available to Idaho Power, and Idaho Power shall purchase and receive the Storage Product. Idaho Power shall be under no obligation to make any purchase hereunder other than the Storage Product, as described above. Idaho Power shall not be obligated to purchase, receive or pay for Storage Product that is not delivered to Idaho Power at the Point of Delivery or otherwise.

5.2 No Sales to Third Parties. During the Term, Seller shall not sell any Storage Product from the Facility to any party other than Idaho Power; provided, however, that this restriction shall not apply during periods when Idaho Power is in default hereof because it has failed to accept the Storage Product delivered by Seller to Idaho Power as required hereunder.

5.3 Title and Risk of Loss of Storage Product. Seller shall deliver the Storage Product to Idaho Power free and clear of all liens, claims and encumbrances. Title to and risk of loss of all

Storage Product shall transfer from Seller to Idaho Power upon its delivery to Idaho Power at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by, all delivery of the Storage Product up to and at the Point of Delivery, or failure to deliver the Storage Product to the Point of Delivery. Idaho Power shall be deemed to be in exclusive control of Storage Product after the Point of Delivery.

5.4 Idaho Power as Purchaser. Seller acknowledges that Idaho Power, acting in its capacity as purchaser under this Agreement, has no responsibility for or control over Idaho Power Transmission or any successor Transmission Provider.

5.5 Purchase and Sale of Capacity Rights. For and in consideration of Idaho Power's agreement to purchase from Seller the Storage Product on the terms and conditions set forth herein, Seller transfers to Idaho Power, and Idaho Power accepts from Seller, all right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term.

5.6 Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person or entity the Capacity Rights, if any. During the Term, Seller shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than Idaho Power. Idaho Power may at its own risk and expense report to any person or entity that Capacity Rights exclusively belong to it.

5.7 Authority to Make Sales. Seller covenants that during the Term it will maintain all required regulatory authority to make wholesale sales from the Facility to Idaho Power.

5.8 Further Assurances. At Idaho Power's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Storage Product to Idaho Power.

SECTION 6
CONTRACT PRICE; COSTS

6.1 Contract Price. Idaho Power shall pay Seller the Contract Price for the Storage Product. Seller shall not be entitled to any compensation over and above the Contract Price for the Storage Product.

6.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Storage Product up to and at the Point of Delivery, including transmission costs, Transmission Service, and transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider and Transmission Provider for the Interconnection Facilities. Idaho Power shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Storage Product at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties. Without limiting the generality of the foregoing, Seller, in accordance with the Generation Interconnection Agreement, shall bear all costs associated with the modifications to

Interconnection Facilities or the System (including system upgrades) caused by or related to (a) the interconnection of the Facility with the System and (b) any increase in generating capacity of the Facility.

6.3 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself.

6.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse Idaho Power for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Storage Product up to and including, but not beyond, the Point of Delivery, regardless of whether such taxes are imposed on Idaho Power or Seller under Requirements of Law. Idaho Power shall pay or cause to be paid when due all such taxes imposed or levied by any Governmental Authority on the Storage Product beyond the Point of Delivery, regardless of whether such taxes are imposed on Idaho Power or Seller under Requirements of Law. The Contract Price shall not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back. In the event any taxes are imposed on a Party for which the other Party is responsible hereunder, the Party on which the taxes are imposed shall promptly provide the other Party written notice thereof and such other information as such Party may reasonably request with respect to any such taxes. Seller shall be responsible for any and all sun and light severance taxes.

6.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof and subject to Section 6.4, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility.

6.6 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term and shall not be subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms or support a petition by any other person or entity seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group. Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008).

SECTION 7
OPERATION AND CONTROL

7.1 As-Built Supplement. Within thirty (30) days of completion of construction of the Facility, Seller shall provide Idaho Power the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to Exhibit 16 when it has been reviewed and approved by Idaho Power, which approval shall not be unreasonably withheld or delayed. If the proposed As-built Supplement does not accurately describe the Facility as actually built or is otherwise defective as to form in any material respect, Idaho Power may within fifteen (15) days after receiving the proposed As-built Supplement give Seller a notice describing what Idaho Power wishes to correct. If Idaho Power does not give Seller such a notice within the fifteen (15) day period, the As-built Supplement shall be deemed approved. If Idaho Power provides a timely notice requiring corrections, Seller shall in good faith cooperate with Idaho Power to revise the As-built Supplement to address Idaho Power's concerns. Notwithstanding the foregoing, Idaho Power shall have no right to require Seller to relocate, modify or otherwise change in any respect any aspect of the Facility as actually built.

7.2 Standard of Facility Operation.

7.2.1 General. At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (a) the applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors to the functions thereof; (b) the Permits and Required Facility Documents; (c) the Generation Interconnection Agreement; (d) all Requirements of Law; (e) the requirements hereof; and (f) Prudent Electrical Practice. Seller acknowledges that it shall have no claims hereunder against Idaho Power with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Transmission Provider. Seller will have no claims against Idaho Power under this Agreement with respect to the provision of station service.

7.2.2 Qualified Operator. From and after the Commercial Operation Date, Seller will cause the Project to be operated and maintained by a Qualified Operator. Seller shall provide Idaho Power thirty (30) days prior written notice of any proposed change in the Qualified Operator of the Facility.

7.2.3 Fines and Penalties.

7.2.3.1 Without limiting a Party's rights under Section 7.2.3.2, each Party shall pay all fines and penalties incurred by such Party on account of noncompliance by such Party with Requirements of Law in respect to this Agreement, except where such fines and penalties are being contested in good faith through appropriate proceedings.

7.2.3.2 If fines, penalties, or legal costs are assessed against or incurred by either Party (the "Indemnified Party") on account of any action by any

Governmental Authority due to noncompliance by the other Party (the "Indemnifying Party") with any Requirements of Law or the provisions hereof, or if the performance of the Indemnifying Party is delayed or stopped by order of any Governmental Authority due to the Indemnifying Party's noncompliance with any Requirements of Law, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party against any and all losses, liabilities, damages, and claims suffered or incurred by the Indemnified Party as a result thereof. Without limiting the generality of the foregoing, the Indemnifying Party shall reimburse the Indemnified Party for all fees, damages, or penalties imposed on the Indemnified Party by any Governmental Authority, other person or entity or to other utilities for violations to the extent caused by a default by the Indemnifying Party or a failure of performance by the Indemnifying Party hereunder.

7.3 Interconnection. Seller shall be responsible for the costs and expenses associated with obtaining from the Transmission Provider Network Resource interconnection service for the Facility at its Nameplate Capacity Rating at the Point of Delivery. Seller shall have no claims hereunder against Idaho Power, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise.

7.4 Coordination with System. Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System.

7.5 Outages.

7.5.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during daylight hours (sun up to sunset) during any portion of the months of November, December, January, February, June, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement. Seller shall provide Idaho Power with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it, only to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of Idaho Power, which approval shall not be unreasonably withheld or delayed.

7.5.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Idaho Power in writing of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins. Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of

Seller and the service obligations of Idaho Power; provided, however, that Seller shall take all reasonable measures consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the daylight hours of the following periods: November, December, January, February, June 15 through June 30, July, August, and September 1 through September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Idaho Power notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. Idaho Power shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify Idaho Power of any subsequent changes in generation capacity available to Idaho Power as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

7.5.3 Forced Outages. Seller shall promptly provide to Idaho Power an oral report, via telephone to a number specified by Idaho Power (or other method approved by Idaho Power), of any Forced Outage resulting in more than ten percent (10%) of the Storage Capacity of the Facility being unavailable. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise Idaho Power of changed circumstances. As soon as practicable, the oral report shall be confirmed in writing by notice to Idaho Power. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

7.5.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Idaho Power, via telephone to a number specified by Idaho Power (or other method approved by Idaho Power), of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than five percent (5%) of the Storage Capacity.

7.6 Scheduling.

7.6.1 Cooperation and Standards. With respect to any and all scheduling requirements hereunder, (a) Seller shall cooperate with Idaho Power with respect to scheduling Discharging Energy and Ancillary Services, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related

matters arising hereunder. Each Party shall comply with the applicable variable resource standards and criteria of any applicable Electric System Authority. Idaho Power shall have all right, title, and interest in and to any gross revenues received by Seller for any Ancillary Services provided by the Facility. Seller shall operate the Facility in accordance with the Storage Operating Restrictions.

7.6.2 Schedule Coordination. If, as a result hereof, Idaho Power is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement, due to Seller's lack of standing as a "scheduling coordinator" or other RTO recognized designation, qualification or otherwise, then Seller shall acquire such RTO recognized standing (or shall contract with a third party who has such RTO recognized standing) such that Idaho Power is no longer responsible for Seller's performance under the Generation Interconnection Agreement or RTO requirement.

7.7 Charging Energy Management.

7.7.1 Upon receipt of a valid Charging Notice, but subject to Section 7.7.2, Seller shall take any and all action necessary to accept the Charging Energy from the Idaho Power generating facilities to the Facility in order to deliver the Storage Product in accordance with the terms and conditions of this Agreement. Idaho Power shall have the right to direct Seller to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically; provided, that Idaho Power's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Storage Operating Restrictions set forth in Exhibit 4. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Idaho Power modifies such Charging Notice by providing Seller with an updated Charging Notice. Seller shall not charge the Facility other than pursuant to a valid Charging Notice or in connection with a Guaranteed Storage Capacity Test. If Seller (a) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Facility in violation of the first sentence of this Section 7.7.1, then (x) Seller shall be responsible for all Energy costs associated with such charging of the Facility, (y) Idaho Power shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Idaho Power shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge. Idaho Power shall have the right to direct Seller to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Storage Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Idaho Power modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

7.7.2 Notwithstanding anything in this Agreement to the contrary, any curtailment order issued by the RTO or any other Governmental Authority, as applicable, regarding the reduced or increased generation of the Facility, whether in response to an Emergency or otherwise, shall have priority over any Charging Notices and Discharging Notices for the applicable period, and Seller shall have no liability for violation of this Section 7.1 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any such notice of curtailment.

7.8 Performance Tests; Guarantees.

7.8.1 Guaranteed Storage Capacity. Seller shall perform the Storage Capacity Test as provided in Exhibit 23, provided in the event that Seller fails to demonstrate compliance with the Guaranteed Storage Capacity. Seller shall pay as liquidated damages for such failure and not as a penalty, the Storage Capacity Damages in the event that Seller fails to demonstrate compliance with the Guaranteed Storage Capacity.

7.8.2 Guaranteed Storage Availability. Seller shall perform the Storage Availability Test as provided in Exhibit 23; provided, if Seller does not achieve the Guaranteed Storage Availability for the previous Contract Year as determined in accordance with the terms of Exhibit 23, then, Seller shall pay as liquidated damages for such failure and not as a penalty, the Storage Availability Damages for each Day during the previous Contract Year in which Seller fails to demonstrate compliance with the Guaranteed Storage Availability.

7.8.3 Guaranteed Roundtrip Efficiency. Seller shall perform the Roundtrip Efficiency Test as provided in Exhibit 23.

7.8.4 Ramp Rate Test. Seller shall perform the Ramp Rate Test as provided in Exhibit 23.

7.8.5 Response Time Test. Seller shall perform the Response Time Test as provided in Exhibit 23.

7.8.6 Auxiliary Load Test. Seller shall perform the Auxiliary Load Test as provided in Exhibit 23.

7.8.7 Power Factor Test. Seller shall perform the Power Factor Test as provided in Exhibit 23.

7.8.8 Noise Test. Seller shall perform the Noise Test as provided in Exhibit 23.

7.9 Electronic Communications.

7.9.1 GOLC. Beginning on the Commercial Operation Date, Idaho Power will dispatch Facility through its GOLC system installed by Seller. The GOLC Set-Point is calculated by the Transmission Provider and communicated electronically

through the SCADA system. Seller shall ensure that, throughout the Term, the SCADA signal is capable of functioning on all GOLC Set-Points within the margin of error specified in the Facility control system manufacturer's set point margin of error. Unless otherwise directed by Idaho Power, Seller shall ensure that the Facility GOLC is in "Remote" set-point control during normal operations.

7.9.2 Telemetering. Seller shall during the Term provide telemetering equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Generation Interconnection Agreement and to Idaho Power on a real-time basis, and will operate such equipment when requested by Idaho Power to indicate instantaneous MW output at the Point of Delivery.

Commencing on the Commercial Operation Date, Seller shall also transmit or cause to be transmitted to or make accessible to Idaho Power any other data from the Facility that Seller receives on a real time basis, including meteorological data, Charging Energy, Discharging Energy, Storage Capacity, Storage Availability and any Ancillary Services provided by the Facility. Such real time data shall be provided to or be made accessible to Idaho Power on the same basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Idaho Power shall also receive the data in four second intervals). Seller must provide Idaho Power access to Seller's web-based performance monitoring system.

7.9.3 Transmission Provider Consent. Seller shall execute a consent, in the form required by Transmission Provider, to provide that Idaho Power can read the meter and receive any and all data from the Transmission Provider relating to the Charging Energy or Storage Product, or other matters relating to the Facility without the need for further consent from Seller.

7.9.4 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Idaho Power and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

7.10 Reports and Records.

7.10.1 Monthly Reports. Commencing on the Commercial Operation Date, within thirty (30) days after the end of each calendar month during the Term (each, a "Reporting Month"), Seller shall provide to Idaho Power a report in electronic format, which report shall include (a) summaries of the Facility's Charging Energy, Discharge Energy, and Ancillary Services provided, including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Idaho Power may from time to time reasonably request.

7.10.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the Commercial Operation Date. Seller shall provide Idaho Power with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

7.10.3 Other Information to be Provided to Idaho Power. Seller shall provide to Idaho Power the following information concerning the Facility:

7.10.3.1 Upon the request of Idaho Power, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

7.10.3.2 A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of Idaho Power any of the technical data obtained in connection with such maintenance;

7.10.3.3 Before Final Completion, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month;

7.10.3.4 Before Final Completion, a monthly report containing a brief summary of construction activity contemplated for the next calendar month;

7.10.3.5 From and after the Commercial Operation Date, a monthly report detailing the availability of the Facility; and

7.10.3.6 At any time from the Effective Date, one year's advance notice of the termination or expiration of any material agreement, including Leases, pursuant to which the Facility or any material equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any land lease. In the event Seller has less than one year's advance notice of such termination or expiration, Seller shall provide the notice contemplated by this Section to Idaho Power within fifteen (15) Business Days of Seller obtaining knowledge of the termination or expiration.

7.10.4 Information to Governmental Authorities. Seller shall, promptly upon written request from Idaho Power, provide Idaho Power with all data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required by Idaho Power or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to Idaho Power copies of all submittals to Governmental Authorities or Electric System Authorities directed by Idaho Power and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge.

Seller shall use best efforts to provide this information to Idaho Power with sufficient advance written notice to enable Idaho Power to review such information and meet any submission deadlines imposed by the requesting organization or entity.

7.10.5 Data Request. Seller shall, promptly upon written request from Idaho Power, provide Idaho Power with data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any Idaho Power rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to Idaho Power sufficiently in advance to enable Idaho Power to review it and meet any submission deadlines. Idaho Power shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of $10,000 per year, if any, incurred in connection with Idaho Power's requests for information under this Section 7.10.5.

7.10.6 Documents to Governmental Authorities. After sending or filing any statement, application, and report or any document with any Governmental Authority or Electric System Authority relating to operation and maintenance of the Facility, Seller shall, within five (5) Business Days of such submission or filing, provide to Idaho Power a copy of the same.

7.10.7 Environmental Information. Seller shall, promptly upon written request from Idaho Power, provide Idaho Power with all data reasonably requested by Idaho Power relating to environmental information under the Required Facility Documents. Seller shall further provide Idaho Power with information relating to environmental impact mitigation measures it is taking in connection with the Facility's construction or operation that are required by any Governmental Authority. As soon as it is known to Seller, Seller shall disclose to Idaho Power, the extent of any material violation of any environmental laws or regulations arising out of the construction, operation, or maintenance of the Facility, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises.

7.10.8 Operational Reports. Seller shall provide Idaho Power monthly operational reports in a form and substance reasonably acceptable to Idaho Power, and Seller shall, promptly upon written request from Idaho Power, provide Idaho Power with all operational data requested by Idaho Power with respect to the performance of the Facility and delivery of the Storage Product.

7.10.9 Notice of Material Adverse Events. Seller shall promptly notify Idaho Power of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided herein. Seller shall promptly disclose to Buyer (but in no case later than two (2) Business Days after Seller obtains actual knowledge) any violation of any Applicable Laws arising out of the construction or operation of the Facility by Seller, its Affiliates or any contractor of any of them, including any Qualified Operator, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to the Facility, if such violation, action or proceeding adversely affects or could reasonably be expected to adversely affect the construction or operation of the Facility or the commercial reputation of Buyer or its Affiliates.

7.10.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, or proceeding before any court or Governmental Authority against Seller or its members with respect to this Agreement or the transactions contemplated hereunder, Seller shall, within ten (10) days of such notice or knowledge, give written notice to Idaho Power of the same. Following its receipt of written notice or actual knowledge of the commencement of any action, suit or proceeding before any court or Governmental Authority against Seller, its members or any Affiliate, the effect of which would materially and adversely affect Seller's performance of its obligations hereunder, Seller shall, within ten (10) days of such notice or knowledge, give notice to Idaho Power of the same.

7.10.11 Additional Information. Seller shall provide to Idaho Power such other information respecting the condition or operations of Seller, as such pertains to Seller's performance of its obligations hereunder, or the Facility as Idaho Power may, from time to time, reasonably request.

7.10.12 Confidential Treatment. The monthly reports and other information provided to Idaho Power under this Section 7.10 shall be treated as Confidential Business Information if such treatment is requested in writing by Seller at the time the information is provided to Idaho Power, subject to Idaho Power's rights to disclose such information pursuant to Sections 7.10.4, 7.10.5, 7.10.7, 11.5, 25.2 and 25.3, and pursuant to any applicable Requirements of Law. Seller shall have the right to seek confidential treatment of any such information from the Governmental Authority entitled to receive such information.

7.11 Financial and Accounting Information. If Idaho Power or one of its Affiliates determines that, under (i) the Accounting Standards Codification (ASC) 810, Consolidation of Variable Interest Entities, and (ii) Requirements of Law that it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon Idaho Power's written request, sufficient financial and ownership information so that Idaho Power or its Affiliate may confirm whether a variable

interest does exist under ASC 810 and Requirements of Law. If Idaho Power or its Affiliate determines that, under ASC 810, it holds a variable interest in Seller, Seller hereby agrees to provide, upon Idaho Power's written request, sufficient financial and other information to Idaho Power or its Affiliate so that Idaho Power may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 and Requirements of Law. Idaho Power shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with Idaho Power's requests for information under this Section 7.11.

7.12 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide Idaho Power and its authorized agents, employees and inspectors ("Idaho Power Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) to provide tours of the Facility to customers and other guests of Idaho Power (not more than twelve (12) times per year), (d) for purposes of implementing Sections 2.7 or 10.5, and (e) for other reasonable purposes at the reasonable request of Idaho Power. Idaho Power shall release Seller from any and all Liabilities resulting from actions or omissions by any of the Idaho Power Representatives in connection with their access to the Facility, except to the extent that such Liabilities are caused by the intentional or negligent act or omission of Seller or its agents or Affiliates.

7.13 Facility Images. Idaho Power shall be free to use any and all images from or of the Facility for promotional purposes, subject to Seller's consent (not to be unreasonably withheld or delayed, and which consent may consider Requirements of Law relating to Premises security, obligations to outside vendors (including any confidentiality obligations), and the corporate policies of Seller's Affiliates). Upon Idaho Power's request and at Idaho Power's expense, Seller shall install imaging equipment at the Facility as Idaho Power may request, including video and or web-based imaging equipment subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety. Idaho Power shall retain full discretion on how such images are presented including associating images of the Facility with a Idaho Power-designated corporate logo.

SECTION 8
RIGHT OF FIRST OFFER AND OWNERSHIP OR PURCHASE OPTION

8.1 Buyer's Affiliates. For purposes of this Section 8, any reference to "Buyer" or "Idaho Power" shall also mean Buyer's or Idaho Power's "Affiliate" as that term is defined in this Agreement.

8.2 Right of First Offer. If this Agreement is terminated for any reason prior to the Commercial Operation Date, then during the Restricted Period, neither Seller nor any of Seller's Affiliates may enter into any agreement to sell, or hedge the quantity of, Storage Product to any party other than Buyer, without first offering the same material price and terms of such agreement to Buyer by written notice ("Offer Notice"). "Restricted Period" means a period that ends eighteen (18) months after the effective date of a termination. If Buyer rejects or fails to respond to the Offer Notice within thirty (30) Business Days, or the Parties

negotiate to enter into an agreement but are unable to execute a definitive agreement within sixty (60) days after Buyer accepts such offer from Seller, then Seller shall have the right to enter into an agreement with a third party on terms and conditions in the aggregate not more favorable than the terms and conditions contained in the Offer Notice. If either Seller or any of its Affiliates wish to enter into an agreement with a third party on terms in the aggregate more favorable to such third party than those offered to Buyer in the Offer Notice, or if Seller or such Affiliate fails to close the transaction (which gave rise to Seller's obligation to provide an Offer Notice) within nine (9) months following the issuance of the Offer Notice, then any subsequent agreement during the Restricted Period shall again be subject to this Section 8.2. This Section 8.2 shall be specifically enforceable by Buyer without bond and without the need to prove irreparable harm. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the Interconnection Agreement) during the Restricted Period, except by a transfer permitted by Section 8.2. Upon termination of this Agreement prior to the Commercial Operation Date, Seller shall deliver a notice of Buyer's rights in respect of the Site, in an executed, recordable form reasonably acceptable to Buyer, that Buyer may record in the real estate records giving notice of Buyer's rights under this Section 8.2. Seller enters into this Section 8.2 as authorized agent for all of its present and future Affiliates. This Section 8.2 shall apply until the earlier of the expiration of the Restricted Period and the consummation of the first bona fide transfer in accordance with its terms.

8.3 Termination of Duty to Buy. If this Agreement is terminated because of a default by Seller, neither Seller, nor any successor to Seller with respect to the ownership of the Facility (for whom Seller acts herein as agent), may thereafter require or seek to require Buyer to purchase Output from the Facility under Public Utility Regulatory policy Act on account of its status as a Qualifying Facility, or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require Buyer to do so.

8.4 Right of First Offer on Ownership.

8.4.1 At any time subsequent to the Effective Date of this Agreement, except in accordance with this Section 8.4.1, Seller: (a) shall not sell, transfer or offer to sell or transfer, the Facility; and (b) shall cause its immediately upstream owner(s) (together with Seller, each a "ROFO Seller") not to sell, transfer or offer to sell or transfer, any ownership interest in Seller (the Facility and ownership interests in Seller, as applicable, each the "Offered Interests") other than to an Affiliate in accordance with the provisions of Section 22.2 (each a "Restricted Transaction"). If a ROFO Seller intends to enter into a Restricted Transaction, Seller shall provide Buyer with written notice of same (a "Seller ROFO Notice"), and Buyer shall have a right of first offer with respect to the purchase of such Offered Interests. Within thirty (30) days after receipt of the Seller ROFO Notice, Buyer shall notify Seller in writing of its decision whether or not to negotiate with ROFO Seller for the purchase of the Offered Interests (the "Buyer ROFO Notice"). If Buyer elects to negotiate with ROFO Seller for the purchase of the Offered Interests, Seller shall cause ROFO Seller to negotiate in good faith and

exclusively with Buyer, for a period of not less than ninety (90) days following ROFO Seller's receipt of the Buyer ROFO Notice. ("ROFO Period").

8.4.2 In the event that Buyer does not elect to negotiate with ROFO Seller for the purchase of the Offered Interests pursuant to Section 8.4.1, ROFO Seller shall be free to sell, transfer or offer or negotiate to sell or transfer the Offered Interests in ROFO Seller's sole discretion. In the event that Buyer elects to negotiate with ROFO Seller for the purchase of the Offered Interests pursuant to Section 8.4.1, and if definitive transaction documents between ROFO Seller and Buyer or its designee have not been executed with respect to the Offered Interests within the ROFO Period, ROFO Seller may negotiate a Restricted Transaction with any other Person, subject, in all cases, to the terms and conditions of this Agreement, including Section 8.4.1 and the provisions of Section 22. In no event may ROFO Seller enter into a Restricted Transaction with any other Person on economic terms (such as purchase price, payment terms and overall revenue streams associated with such transaction) or other material terms less favorable to ROFO Seller than such economic terms, if any, as were negotiated by Buyer and ROFO Seller. As used in this Section 8.4.2, "other material terms" means any terms identified by the Parties acting in good faith within five (5) Business Days following expiration of the ROFO Period that the Parties have not agreed to during their negotiation.

8.4.3 If ROFO Seller and such other Person do not agree upon the terms, conditions and pricing for the Offered Interests within one hundred eighty (180) days following the expiration of the ROFO Period, ROFO Seller and any Offered Interests shall again be subject to this Section 8.2 with respect to any Restricted Transaction.

8.5 [Reserved]

8.6 Efforts Required to Transfer Facility and Offered Interests. If Buyer exercises any right to purchase or agrees to purchase the Facility (or Offered Interests) pursuant to any of the means specified in this Section 8, then such purchase shall occur pursuant to a form of purchase and sale agreement prepared by Buyer which shall contain customary representations, warranties and covenants and otherwise be in form reasonably acceptable to Buyer. It shall be a condition of any such purchase that Buyer obtains all necessary Governmental Approvals, and notwithstanding any language to the contrary in this Agreement, Buyer shall be given sufficient time to obtain such approvals in accordance with applicable statutes and regulations. Pursuant to the purchase and sale agreement, Seller will take all actions necessary to transfer by deed, bill of sale, or both, the Facility or Offered Interests to Buyer, as well as all other improvements placed on the Premises by Seller that are required for the continued and uninterrupted use, maintenance and operation of the Facility, free and clear from any lien or monetary encumbrance created by or on behalf of Seller or its Affiliates. In addition, Seller will assign to Buyer all transferrable Governmental Approvals applicable to the Facility and Required Facility Documents, and all transferrable warranties for the Facility. Seller shall cooperate with Buyer to assign and enforce any and all warranties that apply to the Facility or any of its component parts, which obligation shall survive the termination of this Agreement.

8.7 Due Diligence; Cooperation; Governmental Approvals; Notice of Rights. Seller will provide, in a timely manner, information regarding the Facility and Offered Interests which is reasonably requested by Buyer to allow Buyer to perform due diligence for the purchase of the Facility and Offered Interests pursuant to this Section 8. Seller shall further provide commercially reasonable cooperation and assistance to Buyer, without further compensation, throughout Buyer's efforts to properly account for and obtain any necessary Governmental Approvals with respect to the purchase of the Facility and Offered Interests pursuant to this Section 8. Notwithstanding anything in this Agreement or any definitive transaction documentation, Buyer shall not be obligated to proceed with the purchase of the Facility or any Offered Interests pursuant to this Section 8 if Buyer does not receive all necessary Governmental Approvals in connection with such transaction. Seller shall put any Person with which it enters into discussions or negotiations regarding a Restricted Transaction on notice of the rights of Buyer set forth in this Section 8. Buyer shall be permitted to file a notice of the rights contained in this Section 8 with respect to the Premises.

8.8 Termination of Agreement. Upon the acquisition of the Facility or Offered Interests by Buyer pursuant to this Section 8, this Agreement shall terminate and neither Party shall have any obligation to the other under this Agreement, except with respect to the terms and provisions hereof that expressly survive the termination of this Agreement.

SECTION 9
SECURITY AND CREDIT SUPPORT

9.1 Project Development Security. Seller shall provide within five (5) Business Days from receipt of a written request from Idaho Power all reasonable financial records necessary for Idaho Power to confirm Seller satisfies the Credit Requirements.

9.1.1 Form and Amount of Project Development Security. On or before thirty (30) days of the date of the Effective Date, Seller shall post and maintain in favor of Idaho Power (a) a guaranty from a party that satisfies the Credit Requirements, in substantially the form attached hereto as Exhibit 8, (b) a Letter of Credit in favor of Idaho Power, in a form acceptable to Idaho Power in its reasonable discretion, or (c) cash collateral equal in each case to [$40,000] per MWh of Guaranteed Storage Capacity (the "Project Development Security"). Seller and any person or entity providing a guaranty shall provide within five (5) Business Days from receipt of a written request from Idaho Power all reasonable financial records necessary for Idaho Power to confirm the guarantor satisfies the Credit Requirements.

9.1.2 Use of Project Development Security to Pay Delay Damages. If the Commercial Operation Date occurs after the Scheduled Commercial Operation Date and Seller has failed to pay any Delay Damages when due under Section 4.5, Idaho Power shall be entitled to and shall draw upon the Project Development Security an amount equal to the Delay Damages. Idaho Power shall also be entitled to draw upon the Project Development Security for other damages if this Agreement is terminated under Section 12 because of Seller's default.

9.1.3 Termination of Project Development Security. Seller shall no longer be required to maintain the Project Development Security after the Commercial Operation Date, if at such time no damages are owed to Idaho Power under this Agreement. However, as of the Commercial Operation Date, Seller may elect to apply the Project Development Security toward the Default Security required by Section 9.2, including by the automatic continuation (as opposed to the replacement) thereof.

9.2 Default Security.

9.2.1 Duty to Post Default Security. On the date specified in Section 4.2.1, Seller shall post and maintain in favor of Idaho Power (a) a guaranty from an entity that satisfies the Credit Requirements, in substantially the form attached hereto as Exhibit 8, or (b) a Letter of Credit, each in the amount specified in Section 9.2.2 (the "Default Security"), as provided in this Section 9.2. Seller and any person or entity providing a guaranty shall provide within five (5) Business Days from receipt of a written request from Idaho Power all reasonable financial records necessary for Idaho Power to confirm the guarantor satisfies the Credit Requirements.

9.2.2 Amount of Default Security. The amount of the Default Security required by Section 9.2.1 shall be [$20,0000] per MWh of Guaranteed Storage Capacity and will be held until this Agreement expires.

9.2.3 Use of Default Security to Pay Deficit Damages. If the Seller has failed to pay any Storage Capacity Damages or Storage Availability Damages when due under Section 4.5, Idaho Power shall be entitled to and shall draw upon the Default Security an amount equal to the amount of such damages owed until such time as the Default Security is exhausted. Idaho Power shall also be entitled to draw upon the Default Security for other damages if this Agreement is terminated under Section 12 because of Seller's default.

9.3 Senior Lenders. If Seller collaterally assigns this Agreement to Seller's Lenders in a manner permitted under this Agreement, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit 21. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit 22. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this Agreement.

9.4 Change of Control. Seller may not suffer any Change of Control, whether voluntary or by operation of law, without Buyer's prior written consent, granted or withheld in Buyer's reasonable discretion. Seller may not suffer a Change of Control or any other change of ownership or control, whether direct or indirect, voluntary or by operation of law, such that

Seller becomes a Sanctioned Person. Seller shall give Buyer notice of any Change of Control within ten (10) Business Days following the effectiveness thereof

9.5 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 9 (a) constitutes security for, but is not a limitation of, Seller's obligations hereunder and (b) shall not be Idaho Power's exclusive remedy for Seller's failure to perform in accordance with this Agreement. Seller shall maintain security as required by Sections 9.1 and 9.2, as applicable per this Agreement. To the extent that Idaho Power draws on any security, Seller shall, within five (5) Business Days following such draw, replenish or reinstate the security to the full amount then required under this Section 9. If at any time the Seller or Seller's credit support provider(s) fails to meet the Credit Requirements, then Seller shall provide replacement security meeting the requirements set forth in Section 9 within ten (10) Business Days after the earlier of (x) Seller's receipt of notice from any source that Seller or the credit support provider(s), as applicable, no longer meets the Credit Requirements or (y) Seller's receipt of written notice from Idaho Power requesting the posting of alternate security.

SECTION 10
METERING, METERING COMMUNICATIONS AND SCADA TELEMETRY

10.1 Metering. Idaho Power shall, provide, install, and maintain metering equipment needed for metering the electrical energy storage and discharge from the Facility. The metering equipment will be capable of measuring, recording, retrieving and reporting the Facility's hourly gross electrical energy storage, production, station use, maximum energy deliveries (MW) and any other energy measurements at the Point of Delivery that Idaho Power needs to administer this Agreement and integrate this Facility's energy production into the Idaho Power electrical system. Specific equipment, installation details and requirements for this metering equipment will be established in the GIA process and documented in the GIA. Seller shall be responsible for all initial and ongoing costs of this equipment as specified in Schedule 72 of the Tariff and the GIA. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility.

10.2 Metering Communications. Seller shall, at the Seller's sole initial and ongoing expense, arrange for, provide, install, and maintain dedicated metering communications equipment capable of transmitting the metering data specified in Section10.1 to Idaho Power in a frequency, manner and form acceptable to Idaho Power. Seller shall grant Idaho Power sole control and use of this dedicated metering communications equipment. Specific details and requirements for this metering communications equipment will be established in the GIA process and documented in the GIA.

10.3 Supervisory Control and Data Acquisition (SCADA) Telemetry. If the Facility's Nameplate Capacity exceeds 3 MW, in addition to the requirements of Section 10.1 and 10.2, Idaho Power may require telemetry equipment and telecommunications which will be capable of providing Idaho Power with continuous instantaneous SCADA telemetry of the Seller's Charging Energy and Discharging Energy in a form acceptable to Idaho

Power. Seller shall grant Idaho Power sole control and use of this dedicated SCADA and telecommunications equipment. Specific details and requirements for this SCADA Telemetry and telecommunications equipment will be established in the GIA process and documented in the GIA. Seller shall be responsible for all initial and ongoing costs of this equipment as specified in Schedule 72 of the Tariff and the GIA.

10.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs (including Idaho Power's costs) relating to all metering equipment installed to accommodate the Facility.

10.5 Losses. If the Idaho Power Metering equipment is capable of measuring the exact energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, no Losses will be calculated for this Facility. If the Idaho Power Metering Equipment is unable to measure the exact electric energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, a Losses calculation will be established to measure the energy losses (MWh) between the Seller's Facility and the Idaho Power Point of Delivery. This loss calculation will be initially set at two percent (2%) of the MWh energy discharge recorded on the Facility generation metering equipment. At such time as Seller provides Idaho Power with the electrical equipment specifications (transformer loss specifications, conductor sizes, etc.) of all of the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power will configure a revised loss calculation formula to be agreed to by both parties and used to calculate the MWh Losses for the remaining term of the Agreement. If at any time during the term of this Agreement, Idaho Power determines that the loss calculation does not correctly reflect the actual MWh losses attributed to the electrical equipment between the Facility and the Idaho Power electrical system, Idaho Power may adjust the calculation and retroactively adjust the previous month's MWh loss calculations.

SECTION 11
BILLINGS, COMPUTATIONS AND PAYMENTS

11.1 Monthly Invoices. On or before the tenth (10^{th}) day following the end of each calendar month, Seller shall deliver to Idaho Power a proper invoice showing Seller's computation of Discharging Energy delivered to the Point of Delivery during such month in the form of Exhibit 1. When calculating the invoice, Seller shall provide computations showing the portion of Discharging Energy that was delivered during On-Peak Hours and the portion of Discharging Energy that was delivered during Off-Peak Hours. If such invoice is delivered by Seller to Idaho Power, then Idaho Power shall make payment to Seller within thirty (30) days of receipt of an accurate and undisputed invoice; provided, however, that IPC's payment is not due unless Seller is in compliance with all provisions of this Agreement.

11.2 Offsets. Either Party may offset any payment due hereunder against amounts owed by the other Party pursuant to the terms of this Agreement. Either Party's exercise of recoupment and set off rights shall not limit the other remedies available to such Party hereunder.

11.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid.

11.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Except with respect to invoices provided under Section 11.1, any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within thirty (30) Business Days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

11.5 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense upon reasonable written notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Discharging Energy delivered at the Point of Delivery or Ancillary Services, if any, provided under this Agreement. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 12
DEFAULTS AND REMEDIES

12.1 Defaults. The following events are defaults (each a "default" before the passing of applicable notice and cure periods, and an "Event of Default" thereafter) hereunder:

12.1.1 Defaults by Either Party:

12.1.1.1 A Party fails to make a payment when due hereunder if the failure is not cured within ten (10) Business Days after the non-defaulting Party gives the defaulting Party a notice of the default.

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

12.1.1.3 A Party breaches a representation or warranty made by it herein if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a written notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a ninety (90) day cure period, the defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting Party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

12.1.1.4 A Party otherwise fails to perform any material obligation hereunder for which an exclusive remedy is not provided hereunder and which is not addressed in any other default described in Section 12.1, if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party written notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a ninety (90) day cure period, the defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting Party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

12.1.2 Defaults by Seller.

12.1.2.1 Seller fails to post, increase, or maintain the Project Development Security or Default Security as required under, and by the applicable dates set forth in, Section 9.1 and Section 9.2 and such failure is not cured within ten (10) Business Days after Idaho Power gives Seller notice of default.

12.1.2.2 Seller fails to (i) cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, or (ii) complete all items included on the Final Completion Schedule within ninety (90) days after the Commercial Operation Date.

12.1.2.3 Seller sells Storage Product from the Facility to a party other than Idaho Power in breach of Section 5.2.

12.1.2.4 Idaho Power receives notice of foreclosure of the Facility or any part thereof by a Lender, mechanic or materialman, or any other holder,

of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten (10) days of the date of the notice received by Idaho Power.

12.1.2.5 After the Commercial Operation Date, Seller fails to maintain any Required Facility Documents or Permits necessary to own, operate, or maintain the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from Idaho Power; provided, however, that, upon written notice from Seller, the thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) Seller commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

12.1.2.6 Seller's Abandonment of construction or operation of the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from Idaho Power.

12.1.2.7 Seller fails to maintain insurance as required by the Agreement and such failure continues for fifteen (15) days after Seller's receipt of written notice thereof from Idaho Power.

12.1.2.8 Seller fails to meet the Guaranteed Storage Availability for two (2) consecutive Contract Years.

12.1.2.9 Seller accrues Storage Availability Damages in excess of the Storage Availability Damages Cap in any Contract Year.

12.1.2.10 Seller accrues Storage Capacity Damages in excess of the Storage Capacity Damages Cap.

12.1.2.11 Every three (3) years after the Commercial Operation Date, Seller will supply Idaho Power with a Certification of Ongoing Operations and Maintenance (O&M) from a Registered Professional Engineer licensed in the State of Idaho, which Certification of Ongoing O&M shall be in the form specified in Exhibit 11. Seller's failure to supply the required certificate will be an event of default. Such a default may only be cured by Seller providing the required certificate; and

12.1.2.12 During the full Term of this Agreement, Seller shall maintain compliance with all Required Facility Documents and determinations described in Exhibit 9 of this Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional Required Facility Documents or determinations. At least every fifth (5^{th}) Contract Year, Seller will update the documentation

described in Exhibit 9. If at any time Seller fails to maintain compliance with the Required Facility Documents and determinations described in Section 2.2.3 or to provide the documentation required by this paragraph, such failure will be a default of Seller and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

12.1.2.13 Seller is or becomes a Sanctioned Person.

12.1.2.14 Seller breaches any obligation in Section 27.2, or any representation or warranty made by Seller in Section 27.2 is or becomes false or misleading in any material respect (provided that if the falsity or misleading nature of the representation or breach of the obligation is capable of being cured, an Event of Default will be deemed to occur only if the falsity or misleading nature of the representation or breach of obligation is not remedied within five (5) days after notice);

12.2 Remedies for Failure to Deliver/Receive.

12.2.1 Remedy for Seller's Failure to Deliver. Upon the occurrence and during the continuation of a default of Seller under Section 12.1.2, Seller shall pay Idaho Power within five (5) Business Days after invoice receipt, an amount equal to the sum of (a) Idaho Power's Cost to Cover multiplied by the Discharging Energy delivered to a party other than Idaho Power, (b) additional transmission charges, if any, reasonably incurred by Idaho Power in moving replacement energy to the Point of Delivery or if not there, to such points in Idaho Power's control area as are determined by Idaho Power, and (c) any additional cost or expense incurred as a result of Seller's default under Section 12.1.3, as determined by Idaho Power in a commercially reasonable manner, including the loss of value of Ancillary Services. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

12.2.2 Remedy for Idaho Power's Failure to Purchase. If Idaho Power fails to receive or purchase all or part of the Storage Product required to be purchased pursuant hereto and such failure is not excused under the terms hereof or by Seller's failure to perform, then Seller shall first satisfy its obligations under Section 12.7 and then Idaho Power shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount equal to Seller's Cost to Cover multiplied by the amount of Storage Product so not purchased, less amounts received by Seller pursuant to Section 12.7. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

12.2.3 Remedy for Seller's Failure to Sell/Deliver Capacity Rights. Seller shall be liable for Idaho Power's actual damages in the event Seller fails to sell or deliver all or any portion of the Capacity Rights of the Facility to Idaho Power.

12.3 Termination and Remedies. From and during the continuance of an Event of Default, the non-defaulting Party shall be entitled to all remedies available at law or in equity, and may terminate this Agreement by written notice to the other Party designating the date of termination and delivered to the defaulting Party no less than one (1) Business Day before such termination date. The notice required by this Section 12.3 may be provided in the notice of default (and does not have to be a separate notice) so long as it complies with all other terms of this Section 12.3. As a precondition to Seller's exercise of this termination right, Seller must also provide copies of such notice to the notice addresses of the then-current President and General Counsel of Idaho Power. Such copies shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested. In addition, Seller's termination notice shall state prominently therein in type font no smaller than 14-point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER A BSA. YOU MUST CURE A DEFAULT, OR THE BSA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions. Notwithstanding any other provision of this Agreement to the contrary, Seller will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within fifteen (15) Business Days of Idaho Power's receipt of such notice. Further, from and after the date upon which Seller fails to remedy a default within the time periods provided in Section 12.1, and until Idaho Power has recovered all damages incurred on account of such default by Seller, without exercising its termination right, Idaho Power may offset its damages against any payment due Seller. Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy, upon termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement. The rights contemplated by this Section 12 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. In the event of a termination hereof:

12.3.1 Each Party shall pay to the other all amounts due the other hereunder for all periods prior to termination, subject to offset by the non-defaulting Party against damages incurred by such Party.

12.3.2 The amounts due pursuant to Section 12.3.1 shall be calculated and paid within thirty (30) days after the billing date for such charges and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due hereunder.

12.3.3 Before and after the effective date of termination, the non-defaulting Party may pursue, to the extent permitted by this Agreement, any and all legal or equitable remedies provided by law, equity or this Agreement.

12.3.4 Without limiting the generality of the foregoing, the provisions of Sections 6.4, 6.5, 7.10.4, 7.10.5, 7.10.7, 11.3, 11.4, 11.5, and Section 12, Section 13, Section 14.1,

Section 17, Section 23, Section 24, Section 25, and Section 26 shall survive the termination hereof.

12.4 Termination Damages. If this Agreement is terminated as a result of an Event of Default by one of the Parties, termination damages shall be determined. The amount of termination damages shall be calculated by the non-defaulting Party within a reasonable period after termination of the Agreement. In the event of a default by Seller before the Commercial Operation Date, the termination payment shall be the Pre-COD Damages Payment. In the event of default by Seller on or after the Commercial Operation Date, or any default by Buyer, the termination payment shall be the Forward Settlement Amount. Amounts owed pursuant to this section shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party written notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default.

12.5 Duty/Right 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 performance or non-performance hereof; provided, however, that this duty to mitigate shall not limit the amounts payable by the defaulting Party to the non-defaulting Party pursuant to Section 12.4. "Commercially reasonable efforts" (a) by Seller shall include requiring Seller to use commercially reasonable efforts to maximize the price for Storage Product received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Storage Product not purchased or accepted by Idaho Power (only during a period Idaho Power is in default), in each case only to the extent any of the foregoing actions are permitted under Requirements of Law and the Interconnection Agreement; and (b) by Idaho Power shall include requiring Idaho Power to use commercially reasonable efforts to minimize the price paid to third parties for Storage Product purchased to replace Storage Product not delivered by Seller as required hereunder.

12.6 Security. If this Agreement is terminated because of Seller's default, Idaho Power may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any Seller security held by Idaho Power in whatever form to reduce any amounts that Seller owes Idaho Power arising from such default.

12.7 Cumulative Remedies. Except in circumstances in which a remedy provided for in this Agreement is described as a sole or exclusive remedy, the rights and remedies provided to Idaho Power hereunder are cumulative and not exclusive of any rights or remedies of Idaho Power.

INDEMNIFICATION AND LIABILITY

13.1 Indemnities.

13.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 13.1.5, Seller shall release, indemnify and hold harmless Idaho Power,

its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Idaho Power Indemnitees") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility or Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to or destruction of property of, any person or entity, or for or on account of violation of environmental or criminal law, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Idaho Power Indemnitees. Seller shall be solely responsible for (and shall defend and hold Idaho Power harmless against) any damage that may occur as a direct result of Seller's breach of the Generation Interconnection Agreement.

13.1.2 Indemnity by Idaho Power. To the extent permitted by Requirements of Law and subject to Section 13.1.5, Idaho Power shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Seller Indemnitees") against and from any and all Liabilities actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by Idaho Power of its obligations hereunder for or on account of (a) injury, bodily or otherwise, to, or death of, or (b) for damage to, or destruction of property of, any person or entity within the Seller Indemnitees, excepting only to the extent such Liabilities as may be caused by the negligence or willful misconduct of any person or entity within the Seller Indemnitees.

13.1.3 Additional Cross Indemnity. Without limiting Sections 13.1.1 and 13.1.2, Seller shall release, indemnify and hold harmless the Idaho Power Indemnitees from and against all Liabilities related to Storage Product prior to its delivery by Seller at the Point of Delivery, and Idaho Power shall release, indemnify and hold harmless the Seller Indemnitees from and against all Liabilities related to Storage Product once delivered to Idaho Power at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the gross negligence or willful misconduct or a breach of this Agreement by any member of the Idaho Power Indemnitees or the Seller Indemnitees, respectively, seeking indemnification hereunder.

13.1.4 No Dedication. Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party. No undertaking by one Party to the other under any provision hereof shall constitute the dedication of Idaho Power's facilities or any portion thereof to Seller or to the public, nor affect the status of Idaho Power as an independent public utility corporation or Seller as an independent individual or entity.

13.1.5 Consequential Damages. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, SECURITY, INDEMNIFIED CLAIMS OR DAMAGES, DELAY DAMAGES, IDAHO POWER AND SELLER COST TO COVER DAMAGES, SECTION 12.2.3 CAPACITY RIGHTS LOSS DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT AND WILL NOT BE DEEMED SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES AND SHALL NOT BE LIMITED IN AMOUNT BY THIS SECTION 13.1.5.**

SECTION 14
INSURANCE

14.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry the insurance coverage specified on Exhibit 13 during the Term or longer period if specified in Exhibit 13.

14.2 Certificates of insurance. Seller shall provide Idaho Power with certificates of insurance within ten (10) days after the date by which such policies are required to be obtained (as set forth in Exhibit 13). Seller shall provide a certificate of insurance (in ACORD or similar industry form) to Idaho Power within ten (10) days of the effective date of any insurance policy required under this Agreement.

SECTION 15
FORCE MAJEURE

15.1 Definition of Force Majeure. "Force Majeure" or "an event of Force Majeure" means an event that (a) is not reasonably anticipated as of the Effective Date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; civil disturbance; sabotage; strikes; lock-outs; work stoppages; and action or restraint by court order or public or Governmental Authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or Idaho Power's ability to purchase the Storage Product at a more advantageous price than is provided hereunder; (ii) the cost or availability of Charging Energy for the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of the Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure, (v)

the imposition upon a Party of costs or taxes allocated to such Party under Section 6.4, (vi) delay or failure of Seller to obtain or perform any Required Facility Document unless due to a Force Majeure event, (vii) any delay, alleged breach of contract, or failure by the Transmission Provider, Network Service Provider or Interconnection Provider unless due to a Force Majeure event, (viii) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving the Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a result of an event of Force Majeure); (ix) Seller's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to transmission owner, Transmission Provider or Interconnection Provider, unless due to a Force Majeure event; (x) Seller's inability to obtain any supply of any good or service, unless due to an independent event of Force Majeure; or (xi) any event attributable to the use of Interconnection Facilities for deliveries of Storage Product to any party other than Idaho Power. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, steel, labor, or transportation constitute an event of Force Majeure.

15.2 Suspension of Performance. Neither Party shall be liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become a default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure during the continuation of the event of Force Majeure, for the same number of days that the event of Force Majeure has prevailed, provided that:

15.2.1 the Party affected by the Force Majeure, shall, within five (5) days after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

15.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and

15.2.3 the affected Party shall use diligent efforts to remedy its inability to perform and shall provide prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

15.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure. No obligation of Seller arising before the Commercial Operation Date may be excused by Force Majeure.

15.4 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

15.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding one hundred and eighty (180) consecutive days (despite the affected Party's effort to take all reasonable steps to remedy

the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the Force Majeure event, with respect to its obligations hereunder, may terminate this Agreement by giving ten (10) days prior written notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising hereunder before the effective date of such termination.

SECTION 16
SEVERAL OBLIGATIONS; THIRD PARTY BENEFICIARIES

Nothing contained herein shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties. Nothing in this Agreement shall be construed to create any duty, obligation or liability of Seller or Buyer to any Person not a Party to this Agreement.

SECTION 17
CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Idaho notwithstanding its choice of law provisions.

SECTION 18
PARTIAL INVALIDITY

The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal or void as being contrary to any Requirements of Law or public policy, all other terms hereof shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under Requirements of Law, (b) give effect to the intent of the Parties under this Agreement, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

SECTION 19
NON-WAIVER

No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

SECTION 20
GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party, the Facility, or this Agreement. During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, or ownership of the Facility.

SECTION 21
[INTENTIONALLY OMITTED]

SECTION 22
SUCCESSORS AND ASSIGNS

22.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

22.2 Permitted Assignments. Notwithstanding Section 22.1, either Party may, without the need for consent from the other Party (but with written notice to the other Party, including the names of the assignees): (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with project financing for the Facility; or (b) transfer or assign this Agreement to an Affiliate meeting the requirements of this Agreement; provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of Idaho Power without the prior written consent of Idaho Power. Except with respect to collateral assignments for financing purposes in every assignment permitted under this Section 22.2, the assignee must not be a Sanctioned Person, must agree in writing to be bound by the terms and conditions hereof and must possess the same or similar experience, and possess the same or better creditworthiness, as the assignor. Idaho Power may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that Idaho Power ceases to be a load-serving entity, in which event Idaho Power shall be released from liability hereunder upon approval of Idaho Power ceasing to be a load-serving entity by the IPUC and OPUC. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

SECTION 23
ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. No modification hereof shall be effective unless it is in writing and executed by both Parties.

SECTION 24
NOTICES

24.1 Addresses and Delivery Methods. All notices, requests, statements or payments shall be made to the addresses set out below. In addition, copies of a notice of termination of this

Agreement under Section 12.3 shall contain the information required by Section 12.3 and shall be sent to the then-current President and General Counsel of Idaho Power. Notices required to be in writing shall be delivered by letter, facsimile or other tangible documentary form. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. Notice by hand delivery shall be deemed to have been given when received or hand delivered. Notice by facsimile is effective as of transmission to each and all of the telefacsimile numbers provided below for a Party, but must be followed up by notice by registered mail or overnight carrier to be effective. Notice by overnight mail shall be deemed to have been given the Business Day after it is sent, if sent for next day delivery to a domestic address by a recognized overnight delivery service (e.g., Federal Express or UPS). Notice by certified or registered mail, return receipt requested, shall be deemed to have been given upon receipt.

To Seller:

To Idaho Power:
Idaho Power
1221 W Idaho St
Boise, ID 83702
Attn: Vice President, Power Supply
Email: energycontracts@idahopower.com

with a copy to:
Idaho Power
1221 W Idaho St
Boise, ID 83702
Attn: Energy Contracts
Email: energycontracts@idahopower.com

and termination notices copied to: Idaho Power
1221 W Idaho St
Boise, ID 83702
Attn: Vice President and General Counsel
Email: PHarrington@idahopower.com

24.2 Changes of Address. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this section.

SECTION 25
CONFIDENTIALITY

25.1 Confidential Business Information. The following constitutes "Confidential Business Information," whether oral or written: (a) the Parties' proposals and negotiations concerning this Agreement, made or conducted prior to the Effective Date, (b) the actual charges billed to Idaho Power hereunder, and (c) any information delivered by Idaho Power to Seller prior to the Effective Date relating to the market prices of Storage Product and methodologies for their determination or estimation. Seller and Idaho Power each agree to hold such Confidential Business Information wholly confidential, except as otherwise expressly provided in this Agreement. "Confidential Business Information" shall not

include information that (x) is in or enters the public domain through no fault of the Party receiving such information, or (y) was in the possession of a Party prior to the Effective Date, other than through delivery thereof as specified in subsections (a) and (c) above. A Party providing any written Confidential Business Information under this Agreement shall clearly mark all pages of all documents and materials to be treated as Confidential Business information with the term "Confidential" on the front of each page, document or material. If the Confidential Business Information is transmitted by electronic means the title or subject line shall indicate the information is Confidential Business Information. All Confidential Business Information shall be maintained as confidential, pursuant to the terms of this Section 25.1, for a period of two (2) years from the date it is received by the receiving Party unless otherwise agreed to in writing by the Parties.

25.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its Affiliates, accountants, auditors, counsel, consultants, lenders, prospective lenders, employees, officers and directors), without the prior written consent of the other Party, provided that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required (i) by Requirements of Law, (ii) in order for Idaho Power to receive regulatory approval and recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof, and (b) notwithstanding any other provision hereof, Idaho Power may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Sections 25.1(b) or 25.1(c). In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party shall to the extent possible promptly notify the other Party of the obligation to disclose such information.

25.3 Idaho Power Regulatory Compliance. The Parties acknowledge that Idaho Power is required by Requirements of Law to report certain information that is or could otherwise embody Confidential Business Information from time to time. Such reports include models, filings, reports of Idaho Power's net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1 or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, WECC, Pacific Northwest Utility Coordinating Committee, WREGIS, or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, Idaho Power will from time to time be required to produce Confidential Business Information. Idaho Power may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. Idaho Power may submit Confidential Business Information in regulatory proceedings without notice to Seller.

25.4 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 25 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

25.5 News Releases and Publicity. Except as otherwise provided in Section 7.14, before either Party issues any news release or publicly distributed promotional material regarding the Facility that mentions the Facility, such Party shall first provide a copy thereof to the other Party for its review and approval. Any use of either Party's name in such news release or promotional material must adhere to such Party's publicity guidelines then in effect; any use of Idaho Power's name requires Idaho Power's prior written consent.

SECTION 26
DISAGREEMENTS

26.1 Negotiations. Prior to proceeding with formal dispute resolution procedures as provided below in this Section 26, the Parties must first attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above those employees who have previously been involved in the dispute must meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate any legal remedies available to the Party. All negotiations pursuant to this clause are confidential.

26.2 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to this Agreement shall be brought exclusively in the United States District Court for the District of Idaho in Boise, Idaho, or if such court does not have jurisdiction, in the 4th Judicial District (Ada County) Court of the State of Idaho. By execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein, and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

26.3 Settlement Discussions. No statements of position or offers of settlement made in the course of the dispute process described in this Section 26 will be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by

either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

26.4 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THIS SECTION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

SECTION 27
COMPLIANCE

27.1 Nondiscrimination. Buyer is a federal contractor and maintains an equal opportunity/affirmative action program in accordance with Applicable Law. As a result, Seller must, to the extent required by Applicable Law, afford equal employment opportunity to all of its applicants and employees, regardless of their race, color, national origin, sex, age, religion, marital status, sexual orientation, gender identity and gender expression, protected veteran status, disability, or other basis protected by law. Also as a result, but only if required by Applicable Law, Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status. In connection with this Agreement and the Facility, Seller will comply with, and cause all of its direct and indirect contractors and subcontractors to expressly agree to comply with, all laws and regulations relating to forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons.

27.2 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Facility or the Premises, Seller, on

behalf of itself, Seller's Parent Entity and any other direct or indirect upstream equity owners that, notwithstanding percentage of equity ownership interest, have the voting power or otherwise have the power to control the day-to-day management, operations and policies of Seller, and such Affiliates that Seller contractually or otherwise controls or directs in the management or operation of the Facility, and in each case, including the officers, directors, employees and agents of such entities, represents and warrants that it has not engaged in, and that it shall refrain from, offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in his or her official capacity, (ii) induce a Government Official to act in violation of his or her lawful duty, (iii) induce a Government Official to use his or her influence with a government or instrumentality thereof, or (iv) otherwise secure any improper advantage, in each case to the extent prohibited by applicable anti-corruption laws; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption laws. If Seller fails to comply with this Section 27.2 then Buyer may terminate this Agreement in accordance with Section 12.1.2.12. In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for five (5) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any breach of this Section 27.2 by Seller or its representatives. Seller will ensure that the contractors and subcontractors it retains in connection with this Agreement expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 27.2 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to an Event of Default under Section 12.1.2.12, Buyer shall have no obligation to make further payments hereunder. Buyer's rights and Seller's obligations under this Section 27.2 shall survive the termination or expiration of the Agreement.

27.3 Prohibited Technology. Pursuant to Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and Federal Acquisition Regulation (FAR) 52.204-25 (Aug. 2020), Seller agrees, represents, and warrants that Seller shall not supply or deliver to IPC any "covered telecommunications equipment or services" as a substantial or essential component of any system or critical technology of any system. As defined in FAR 52.204-25(a), "covered telecommunications equipment or services" includes equipment, systems, products, or services made by any of the following companies, or any subsidiary or affiliate thereof (including companies with the same principal word in the name, e.g., "Huawei" or "Hytera"): Huawei Technologies Company; ZTE Corporation; Hytera Communications Corporation; Hangzhou Hikvision Digital Technology Company; or Dahua Technology Company. "Covered telecommunications equipment or services" may include, but are not limited to, video/monitoring surveillance equipment/services, public switching and transmission equipment, private switches, cables, local area networks,

modems, mobile phones, wireless devices, landline telephones, laptops, desktop computers, answering machines, teleprinters, fax machines, and routers. "Covered telecommunications equipment or services" do not include telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that the equipment transmits or handles.

To the extent that the systems, products, or services to be provided by Seller under this Agreement may be procured by IPC in support of or to satisfy IPC's obligations under agreements with a federal governmental entity, Seller further agrees that FAR 52.204-25 (Aug. 2020), except for paragraph (b)(2) thereof, shall be incorporated by reference into this Agreement and is binding on Seller, and that Seller does not use any equipment, system, or service that uses covered telecommunications equipment or services and will not supply any covered telecommunications equipment or services to IPC. Seller further agrees that, if it identifies covered telecommunications equipment or services used as a substantial or essential component of any system or as critical technology as part of any system during contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall immediately notify IPC and reasonably cooperate with IPC's requests for information.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date last written below.

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

EXHIBIT 1

MONTHLY POWER PRODUCTION AND SWITCHING REPORT

Month _____ **Year** _____

Project		**Project**	
Address		**Phone**	
City	**State** **Zip**		**State**

	Facility Output	**Station Usage**		**Metered Maximum**
Meter Number:				
End of Month MWh Meter Reading:				**MW**
Beginning of Month MWh				
Difference:				
Times Meter Constant:				**Net Generation**
MWh for the Month:		-	=	
Metered Demand:				

Breaker Opening Record

Date	**Time**	**Meter**

*	**Reason**

Breaker Closing Record

Date	**Time**	**Meter**

***** **Breaker Opening Reason Codes**

1 **Lack of Adequate Prime Mover**
2 **Forced Outage of Facility**
3 **Disturbance of IPCo System**
4 **Scheduled Maintenance**
5 **Testing of Protection Systems**
6 **Cause Unknown**
7 **Other (Explain)**

I hereby certify that the above meter readings are true and correct as of Midnight on the last day of the above month and that the switching record is accurate and complete as required by the Energy Sales Agreement to

_____ _____
Signature **Date**

A-2 AUTOMATED METER READING COLLECTION PROCESS

Monthly, Idaho Power will use the provided Metering and Telemetry equipment and processes to collect the meter reading information from the Idaho Power provided Metering Equipment that measures the Net Energy and energy delivered to supply Station Use for the Facility recorded at 12:00 AM (Midnight) of the last day of the month.

The meter information collected will include but not be limited to energy production, Station Use, the maximum generated power (MW) and any other required energy measurements to adequately administer this Agreement.

A-3 SELLER CONTACT INFORMATION

Seller's Contact Information

Name:
Telephone Number:
Cell Phone:
E-Mail:

24-Hour Project Operational Contact

Name:
Telephone Number:
Cell Phone:
E-Mail:

Project On-site Contact information

Name:
Telephone Number:
Cell Phone:
E-Mail:

EXHIBIT 2

DESCRIPTION OF FACILITY

Project Name: _____

Project Number: _____

B-1 DESCRIPTION OF FACILITY

(Must include the Nameplate Capacity rating and VAR capability (both leading and lagging) of all Generation Units to be included in the Facility.)

_____
_____
_____
_____
_____

Var Capability (Both leading and lagging) Leading is _____Lagging is _____.

B-2 LOCATION OF FACILITY

Near: _____

Actual or nearest physical street address: _____

GPS Coordinates: Latitude Decimal Degrees: _____

Longitude Decimal Degrees: _____

State: _____ County: _____

EXHIBIT 3

POINT OF DELIVERY/INTERCONNECTION FACILITIES

Instructions to Seller:

1. Include description of point of metering, and Point of Interconnection
2. Include description of Point of Delivery
3. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Interconnection.
4. Describe Seller's arrangements for station service to the Facility and show on one-line diagram how station service will be provided and metered.
5. Specify the maximum hourly rate (MW) at which Seller is permitted to deliver energy to the Point of Delivery and in compliance with Seller's transmission rights between the Point of Interconnection and the Point of Delivery ("Maximum Transmission Rate"):

_____MW.

Seller to provide to Buyer with a copy of the final Generator Interconnection Agreement

EXHIBIT 4

STORAGE OPERATING RESTRICTIONS

Maximum Storage Level:	[____] MWh
Minimum Storage Level:	[____] MWh
Maximum Charging Capacity:	[____] MW
Minimum Charging Capacity:	[____] MW
Maximum Discharging Capacity:	[____] MWh
Minimum Discharging Capacity:	[____] MWh
Maximum State of Charge during Charging:	[____]%
Minimum State of Charge during Discharging:	[____]%
Ramp Rate:	[___] MW/minute
Annual Cycles:	Maximum of [___] Full Cycle Equivalents per Contract Year with no monthly cap.
Daily Dispatch Limits:	Charging: [___] per day Discharging: [___] per day Partial Charging/Discharging: [___]

Maximum Time at Minimum Storage Level:	N/A
Other Operating Limits:	1. Storage Facility to be charged only from the Generating Facility. 2. All manual dispatch commands by Idaho Power must use the supplied energy management system. 3. The average resting State of Charge per Contract Year must be below [___]%. 4. Up to [___] hours of idle time is required following a continuous discharge of greater than [___]% of the Storage Capacity (as measured in MWh).

EXHIBIT 5

CONTRACT PRICE

Contract Price	
Contract Year	$/kW-Month
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

EXHIBIT 6

NERC EVENT TYPES

Event Type	**Description of Outages**
U1	Unplanned (Forced) Outage—Immediate – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2	Unplanned (Forced) Outage—Delayed – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3	Unplanned (Forced) Outage—Postponed – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF	Startup Failure – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	Maintenance Outage – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	Maintenance Outage Extension – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	Planned Outage – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine replacement or inspections are typical planned outages.)
PE	Planned Outage Extension – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

EXHIBIT 7

START-UP TESTING

(Seller to provide to Buyer before the First Operation Date)

EXHIBIT 8

FORM OF GUARANTY — CREDIT SUPPORT OBLIGATION

FORMS OF LIQUID SECURITY

The Seller shall provide Idaho Power with commercially reasonable security instruments such as Cash, Cash Escrow Security, Guarantee or Letter of Credit as those terms are defined below or other forms of liquid financial security that would provide readily available cash to Idaho Power to satisfy the security requirements within this Agreement.

For the purpose of this Appendix D, the term "Credit Requirements" shall mean acceptable financial creditworthiness of the entity providing the security instrument in relation to the term of the obligation in the reasonable judgment of Idaho Power, provided that any guarantee and/or Letter of Credit issued by any other entity with a short-term or long-term investment grade credit rating by Standard & Poor's Corporation or Moody's Investor Services, Inc. or any successors shall be deemed to have acceptable financial creditworthiness.

1. Cash – Seller shall deposit cash in the amount of the required security with Idaho Power. Idaho Power will not be responsible to calculate or pay any interest on these funds deposited with Idaho Power.

2. Cash Escrow Security – Seller shall deposit funds in an escrow account established by the Seller in a banking institution acceptable to both Parties equal to the required security. The Seller shall be responsible for all costs, and receive any interest earned associated with establishing and maintaining the escrow account(s).

3. Guarantee or Letter of Credit Security – Seller shall post and maintain in an amount equal to the required security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or (b) an irrevocable Letter of Credit in a form acceptable to Idaho Power, in favor of Idaho Power. The Letter of Credit will be issued by a financial institution acceptable to both parties. The Seller shall be responsible for all costs associated with establishing and maintaining the Guarantee(s) or Letter(s) of Credit.

EXHIBIT 9

REQUIRED FACILITY DOCUMENTS

1. **Obtained Required Facility Documents:**

Permits:

Conditional Use Permits from Twin Falls County for the construction and operation of the Facility

Land Rights:

Lease Agreement for the land, access, and interconnection of the Facility.

2. **To Be Obtained (Prior to Commercial Operation) Required Facility Documents:**

Licenses, Permits and Authorizations:

Evidence of market-based rate authority under Section 205 of the Federal Power Act or evidence of qualifying facility certification under the Public Utility Regulatory Policies Act

Access road easement

Electrical Permit

Building Permit

Interconnection approval

Utility easement

Crossing Agreement

Construction and Operations and Maintenance:

Contract for the Sale of Power Generation Equipment and Related Services between vendors and engineering, procurement, and construction contractor and Seller

Generator Interconnection Agreement

Retail Electric Service Agreement

Proof of Insurance

Construction Agreements:

Balance of Plant/Construction Services Agreement

Operations and Maintenance Agreements:

Warranty, Service and Maintenance Agreement

SUCH LIST MAY BE UPDATED PURSUANT TO SECTION 2.2.3

EXHIBIT 10

LEASES

(Seller to provide to Buyer before the Commercial Operation Date)

Memorandum of Lease Agreement 1

Memorandum of Lease Agreement 2

EXHIBIT 11

ENGINEER'S CERTIFICATIONS

ENGINEER'S CERTIFICATION

OF

OPERATIONS & MAINTENANCE POLICY

The undersigned _____, on behalf of himself/herself and

_____ , hereinafter collectively referred to as "Engineer," hereby states and certifies to the

Seller as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter referred to as the "Agreement," between Idaho Power as Buyer, and _____as Seller, dated _____.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as Idaho Power Company Facility No. _____ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the _____Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, said Project has been designed and built to appropriate standards, and adherence to said O&M Policy will result in the Project's producing at or near the design electrical output, efficiency and plant factor for the full Contact Term of _____ years.
9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.
10. That Engineer certifies that the above statements are complete, true and accurate to the best of his/her knowledge and therefore sets his/her hand and seal below.

By _____

(P.E. Stamp)

Date _____

ENGINEER'S CERTIFICATION

OF

ONGOING OPERATIONS AND MAINTENANCE

The undersigned _____, on behalf of himself/herself and _____ hereinafter collectively referred to as "Engineer," hereby states and certifies to the Seller as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter referred to as the "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as Idaho Power Company Facility No. _____ and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the _____Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has made a physical inspection of said Project, its operations and maintenance records since the last previous certified inspection. The Engineer certifies, based on the Project's appearance and the information provided by the Project, that the Project's ongoing O&M has been completed in accordance with said O&M Policy; that it is in reasonably good operating condition; and it is in the Engineer's professional opinion that if adherence to said O&M Policy continues, the Project will continue producing at or near its design electrical output, efficiency and plant factor for the remaining _____ years of the Agreement.
9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.
10. That Engineer certifies that the above statements are complete, true and accurate to the best of his/her knowledge and therefore sets his/her hand and seal below.

By _____

(P.E. Stamp)

Date _____

ENGINEER'S CERTIFICATION

OF

DESIGN & CONSTRUCTION ADEQUACY

The undersigned _____, on behalf of himself/herself and _____ hereinafter collectively referred to as "Engineer", hereby states and certifies to Idaho Power as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereinafter referred to as the "Agreement", between Idaho Power as Buyer, and _____as Seller, dated _____,_____.
3. That the cogeneration or small power production project, which is the subject of the Agreement and this Statement, is identified as Idaho Power Company Facility No _____ and is hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the _____Project is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.
8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.
9. That the Project has been constructed in accordance with said plans and specifications, all applicable codes and consistent with Prudent Electrical Practices as that term is described in the Agreement.
10. That the design and construction of the Project is such that with reasonable and prudent operation and maintenance practices by Seller, the Project is capable of performing in accordance with the terms of the Agreement and with Prudent Electrical Practices for a _____ year period.
11. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, in interconnecting the Project with its system, is relying on Engineer's representations and opinions contained in this Statement.
12. That Engineer certifies that the above statements are complete, true and accurate to the best of his/her knowledge and therefore sets his/her hand and seal below.

By _____

(P.E. Stamp)

Date _____

EXHIBIT 12

[RESERVED]

EXHIBIT 13

REQUIRED INSURANCE

The Seller shall secure and continuously carry insurance as specified within this Appendix for the term of the Agreement.

Insurance Requirements:

1. All insurance required by this Agreement shall be placed with an insurance company with an A.M. Best Company rating of A- or better.

2. If the insurance coverage required in this Appendix is cancelled, materially changed or lapses for any reason, the Seller will immediately notify Idaho Power in writing. This notice will advise Idaho Power of the specific reason for cancellation, material change or lapse and the steps being taken to comply with these Insurance Requirements. Failure to provide this notice and to comply with these Insurance Requirements within 5 days of the cancellation, material change or lapse will constitute a material breach and Idaho Power may terminate this Agreement.

3. Prior to the First Energy date and subsequently within 10 days of the annual anniversary of the Operation Date, the Seller shall provide a Certificate of Insurance in the name of Idaho Power Company and list Idaho Power Company as an Additional Insured Endorsement and Waiver of Subrogation Endorsement.

4. The Certificate of Insurance shall evidence the appropriate insurance coverage of Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to [$1,000,000], each occurrence, combined single limit. The deductible for such insurance shall be consistent with current Insurance Industry Utility practices for similar property.

Seller shall be entitled to self-insure these coverages with approval of Idaho Power, which shall not be unreasonable withheld, delayed or conditioned.

4.1 Periodic Review. Idaho Power may review this schedule of insurance as often as once every two (2) years. Idaho Power may in its discretion require Seller to make reasonable changes to the policies and coverages described in this Exhibit to the extent reasonably necessary to cause such policies and coverages to conform to the insurance policies and coverages typically obtained or required for power generation facilities comparable to the Facility at the time Idaho Power's review takes place.

EXHIBIT 14

SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO IDAHO POWER

[DATE]

Idaho Power
1221 W Idaho St
Boise, ID 83702
Email: energycontracts@idahopower.com

To Whom it May Concern:

_____ ("Seller") hereby voluntarily authorizes Idaho Power's Transmission business unit to share Seller's interconnection information with marketing function employees of Idaho Power, including but not limited to those in Power Supply. Seller acknowledges that Idaho Power did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

_____

EXHIBIT 15

ATTACHMENTS

(Seller to provide to Buyer before the First Generation Date)

1. Site Map
2. As-Builts
3. Manufacturer's performance warranties
4. [Other]

EXHIBIT 16

AS-BUILT SUPPLEMENT

EXHIBIT 17

[NOT USED]

EXHIBIT 18

FORM OF CONSTRUCTION PROGRESS REPORT

Construction Progress Report
of
_____
("Seller")
provided to
[BUYER ENTITY]
("Buyer")
[Date]

Instructions.
Any capitalized terms used in this report which are not defined herein are defined in the Power Purchase Agreement by and between , ("Seller") and [BUYER ENTITY] dated _____, (the "Agreement").

Seller shall review the status of each milestone of the construction schedule for the Facility and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the milestones will be attained by their required dates. Such matters may include:

(i) Any material matter or issue arising in connection with a Permit, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of an Applicable Law, actual or threatened opposition to the granting of a necessary Permit, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any milestone.

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any milestone;

(iv) Any material change in Seller's schedule for initiating or completing any material aspect of Facility;

(v) The status of any matter or issue identified as outstanding in any prior Construction Progress Report and any material change in Seller's proposed actions to remedy or overcome such matter or issue.

For guidance, each "overview" subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each "recent activities" subsection shall include details of activities during the previous month. Each "expected activities" subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Construction Progress Report to [_____], together with all attachments and exhibits, with copies of this report delivered to [_____].

1. Executive Summary

Please provide an overview of the Facility, including technology, size, location, and ownership. Please provide a brief chronological cumulative summary of the major activities completed for each of the following aspects of the Facility. Include the date each item was added to the summary:

1.1 Milestones

1.2 Permits

1.3 Financing

1.4 Property Acquisition

1.5 Design and Engineering

1.6 Major Equipment procurement

1.7 Construction

1.8 Interconnection

1.9 Startup

2. Milestones

In this section, please include information on each significant milestone related to the Facility.

2.1 Milestone schedule

Please state the status and progress of each milestone. Provide the date of completion of completed milestone(s) and the expected date of completion of uncompleted milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

2.2 Remedial Action Plan (applicable if Seller fails to achieve a milestone by the anticipated milestone date)

Please describe in detail any delays (actual or anticipated) beyond the scheduled milestone dates. Describe the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, Facility construction, interconnection, or any other factor). Describe Seller's remedial action plan which shall include detailed plans to achieve the missed milestone and subsequent milestones.

3. Permits

In this section, please include information on each of the Permits required for the construction of the Facility and the status thereof. List the applicable government agency, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents or approvals, final documents or approvals, notice of determination, or issuance of permit. If the government agency maintains a website with information on the approval process for the Facility, please provide a link.

3.1 Environmental Impact Report/Statement (EIR/EIS) of Conditional Use Permit (CUP)

Please describe the environmental review process and each of the Permit(s) to be obtained for the Facility. Provide the status and completion date (expected or actual) of each significant activity in the process.

3.2 Other Permits

Please describe each of the other Permits to be obtained for the Facility. Provide the status and completion date (expected or actual) of each significant activity.

3.3 Recent Permit activities

Please describe in detail the Permit activities that occurred during the previous calendar month.

3.4 Expected Permit activities

Please list all Permit activities that are expected to be performed during the current calendar month.

4. Financing Activities

In this section, please include information on each separate phase of financing for the Facility. Include information on debt, equity, or federal or state loans or grants.

4.1 Overview of financing activities

Please provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

4.2 Recent financing activities

Please describe in detail the financing activities that occurred during the previous calendar month.

4.3 Expected financing activities

Please list the financing activities that are expected to be performed during the current calendar month.

5. Property Acquisition Activities

In this section, please include information on property acquisition or site control activities for the Facility.

5.1 Overview of property acquisition activities

Please provide a summary of the status and progress of each major property acquisition activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

5.2 Recent property acquisition activities

Please describe in detail the property acquisition activities that occurred during the previous calendar month.

5.3 Expected property acquisition activities

Please list the property acquisition activities that are expected to be performed during the current calendar month.

6. Design and Engineering Activities

In this section, please include information on the status of design and engineering for the Facility.

6.1 Overview of design activities

Please provide a summary of the status and progress of each major design or engineering activity, including dates of completion of significant activities and expected timing of future activities.

6.2 Recent design activities

Please describe in detail the design activities that occurred during the previous calendar month.

6.3 Expected design activities

Please list the design activities that are expected to be performed during the current calendar month.

7. Major Equipment Procurement

In this section, please include information on all major equipment to be procured for all portions of the Facility to be completed by Seller, including switchyards, substations and any other interconnection equipment, in addition to generating and auxiliary equipment.

7.1 Overview of major equipment procurement activities

For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item (to be) procured or delivered in each month.

7.2 Recent major equipment procurement activities

Please describe in detail the major equipment procurement activities that occurred during the previous calendar month.

7.3 Expected major equipment procurement activities

Please list the major equipment procurement activities that are expected to be performed during the current calendar month.

8. Construction Activities

In this section, please include information on the status of any construction-related factors that may affect the ability of the Facility to deliver the Storage Product. Include information on the Facility infrastructure, generating equipment, and major auxiliary equipment. Also include

information on the substations, switchyards, gen-ties, telecommunications equipment or other interconnection facilities that are the direct responsibility of the Facility.

8.1 Overview of major construction activities

Please provide a summary of the status and progress of each major construction activity for all portions of the Facility, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a Notice to Proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed or commissioned in each month.

8.2 Recent construction activities

Please describe in detail the construction activities that occurred during the previous calendar month.

8.3 Expected construction activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

8.4 EPC Contractor Progress Report

Please attach a copy of the progress reports received during the previous calendar month from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

8.5 Look-ahead construction schedule

Please provide a look-ahead construction schedule covering at least three months.

8.6 OSHA Recordables

Please list all OSHA recordables from the previous calendar month.

8.7 Work stoppages

Please describe any work stoppage from the previous calendar month and its effect on the construction schedule.

9. Interconnection Activities

In this section, please include information on interconnection-related factors that may affect the ability of the Facility to deliver Facility Energy. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of interconnection facilities (e.g., substations, switchyards, gen-ties, system protection schemes,

telecommunications equipment to the extent not already covered in the Facility construction information in Section 8), network upgrades, and grid outage or interconnection schedules.

9.1 Overview of interconnection activities

Please provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.

9.2 Recent interconnection activities

Please describe in detail the interconnection activities that occurred during the previous calendar month.

9.3 Expected interconnection activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

10. Startup

In this section, please include information on the status of activities related to preparation for Commercial Operation, including equipment testing, commissioning, release to operations, requirements of the grid operator, and any other activities that must be conducted before the Facility may deliver Energy to the grid or declare Commercial Operation.

10.1 Overview of startup activities

Please provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

10.2 Recent startup activities

Please describe in detail the startup activities that occurred during the previous calendar month.

10.3 Expected startup activities

Please list the startup activities that are expected to be performed during the current calendar month.

11. Other Information Reasonably Requested by Buyer

11.1 Litigation

Please list any communication received directly or indirectly from any third party that is in the nature of a threat of litigation, a litigation hold notice, a summons and complaint, or a

commencement of a judicial, regulatory, or arbitration proceeding or investigation against Seller or concerning the Facility

11.2 [_____]

I, _____, on behalf of and as an authorized representative of _____, do hereby certify that any and all information contained in this Seller's Construction Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

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

EXHIBIT 19

FORM OF OPERATIONS REPORT

EXHBIT 20

[IDAHO POWER FORM OF WREGIS QRE AGREEMENT]

EXHIBIT 21

FORM OF LENDER CONSENT

CONSENT AND AGREEMENT

This Consent and Agreement (this "Consent") is made and entered into as of ___ _, 20__, by and between Idaho Power Corporation ("Buyer"), and _____ ("Lender").

RECITALS

A. _____ ("Seller"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "Loan Agreement"), with Lender in order to finance construction of a battery energy storage system owned by Seller and located at ____ (the "Project").

B. Seller and Buyer have entered into that certain Battery Storage Agreement, dated as of ____ (as amended, restated, supplemented or otherwise modified from time to time, the "BSA"), relating to the energy stored and discharged by the Project to supply the needs of Buyer's customers.

C. As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "Pledged Equity"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the BSA (the "Pledged SA", collectively with the Pledged Equity, the "Assigned Interest") to Lender.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged BSA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged BSA Step-In. "Subsequent Seller Requirements" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of battery energy storage facilities of comparable size to the Facility and the ability perform all aspects of the BSA; (d) has agreed in writing to be bound by the BSA and to assume all of Seller's obligations under the BSA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the

Pledged BSA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of and after the date of assignment, the Project Development Security or Default Security, as applicable, and (iii) Buyer has not terminated this BSA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged BSA (a "Subsequent Seller"), may be substituted for Seller under the BSA and Buyer shall recognize such Subsequent Seller as its counterparty under the BSA and, subject to all rights and remedies of Buyer under the BSA, continue to perform its obligations under the BSA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the BSA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the BSA. The transfer of the BSA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the BSA, Lender may cure such default by the deadline provided therefor in the BSA. Buyer will not terminate the BSA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 11.1(l) of the BSA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the BSA, and (b) with respect to other defaults (except those set forth in Section 11.1(e)-(j) of the BSA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the BSA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 11.1(c) of the BSA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. BSA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the BSA; provided that notwithstanding the foregoing, Buyer may terminate the BSA without Lender consent due to an

uncured Event of Default under the BSA after the expiration of Lender's rights to cure under Section 4 hereof.

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the BSA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the BSA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the BSA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the BSA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the BSA is attached hereto as Exhibit A and the BSA has not been further amended, (v) Buyer is not in default of any of its obligations under the BSA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the BSA, Seller is not in default of any of its obligations under the BSA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the BSA, there are no material disputes between Buyer and Seller under the BSA, (viii) Buyer has not assigned any interest it has in the BSA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the BSA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the BSA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the BSA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the BSA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the BSA.

8. Replacement Agreement. If the BSA is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the BSA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be

equal to the remaining balance of the term specified in the BSA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the BSA (other than the bankruptcy of Seller or a transfer of the Facility to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 9.2 of the BSA).

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:

With a copy to:

If to Buyer:

With copies to all of:

If to Lender:

With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the BSA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the BSA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

IDAHO POWER COPRPORATION

By: _____
Name:_____
Title:_____

[LENDER]

By _____
Its _____

ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between Idaho Power Corporation (as "Buyer"), and _____ (as "Lender"). _____ as "Seller" under the BSA (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the BSA, as and when required under the BSA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the BSA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the BSA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the BSA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the BSA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the BSA. Seller shall have no rights against Buyer, under the BSA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

By:
Its:
Date:

EXHIBIT 22

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE

This Estoppel Certificate ("Estoppel") is dated _____ __, 20__. Reference is made to that certain Battery Storage Agreement, dated as of _____ (the "BSA"), by and between Idaho Power Corporation ("Buyer"), and _____ ("Seller") concerning the storage and discharge of electrical energy and other services provided the battery energy storage system owned by Seller and located in ____ (the "Project"). This certificate is delivered by Buyer to _____ ("Investor") and _____ as Administrative Agent (as defined in the Consent defined below) ("Administrative Agent"). Capitalized terms used but not defined herein are defined in the BSA.

Buyer certifies that, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the BSA have been duly authorized by all necessary action on the part of Buyer, (ii) each of this Estoppel and the BSA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the BSA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the BSA is attached hereto as Exhibit A and the BSA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the BSA, Buyer is not in default of any of its obligations under the BSA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the BSA, Seller is not in default of any of its obligations under the BSA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the BSA, there are no material disputes between Buyer and Seller under the BSA, (viii) Buyer has not assigned any interest it has in the BSA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the BSA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the BSA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the BSA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the BSA][omit if estoppel delivered after COD], no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the BSA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

IDAHO POWER CORPORATION

By: _____
Name:_____
Title:_____

EXHIBIT 23

PERFORMANCE TESTS

Test Records: Seller shall record the results of each Performance Test, provide all raw data, records and results associated with each Performance Test, and submit a testing report detailing all results and findings of each Performance Test to Buyer within four (4) Business Days following completion of such Performance Test. During the performance of each Performance Test, the Facility shall be functioning in a manner to permit Buyer to remotely monitor, observe and independently verify the performance of the Facility through the Facility's remote monitoring and control systems.

Guaranteed Storage Availability Test

No later than forty-five (45) days prior to the Scheduled Commercial Operation Date, and no later than thirty (30) days following the conclusion of each Contract Year thereafter for the Settlement Term, the Storage Availability shall be at least _____ percent (_____%), calculated in accordance with the following procedure ("Guaranteed Storage Availability Test"):[5]

"**Storage Availability**" shall be calculated based upon the following formula:

- PH = period hours
- PMH = period planned maintenance hours
- GPC = Guaranteed Power Capacity
- PC = Available power capacity (MW) defined as battery power capability on-line and available for operation in either charge or discharge
- GEC = Guaranteed Rated Energy Capacity
- AC = Available energy capacity (MWh) defined as the battery energy storage capacity online and available for operation in either charge or discharge
- PAC = Period unavailable average capability, calculated as the normalized average of the maximum either energy storage capacity or power available during the period. A sample is not valid if during planned maintenance or a no-fault outage.

$$PAC = \sum \left(1 - min\left\{\frac{AC}{GEC}, \frac{PC}{GPC}\right\}\right)$$

- PFO = Period at-fault outage hours, defined as hours during which all or a portion of the available energy or power capacity is unavailable

[5] Note: The Facility will need to be operational in order to conduct the Storage Availability Test, and thereafter calculated annually in accordance with a procedure to be agreed upon by the Parties.

- PNFO = Period of not at fault (excused) outage hours, defined as hours during which all or a portion of the available energy or power capacity is unavailable due to no fault of Seller provided equipment

Therefore, Availability is calculated as the following:

$$Availability = 100 * \frac{(PH - PMH - PNFO - \sum[PFO * PAC])}{(PH - PMH - PNFO)}$$

Guaranteed Storage Capacity Test

No later than thirty (30) days prior to the Scheduled Commercial Operation Date, and no later than thirty (30) days following the conclusion of each Contract Year thereafter for the Settlement Term, the Facility shall be capable of the Guaranteed Storage Capacity. The Storage Capacity shall be calculated in accordance with the following procedure ("Guaranteed Storage Capacity Test"):

The "**Guaranteed Storage Capacity**" shall mean the guaranteed energy capacity (MWhAC) delivered over a full continuous discharge of the Facility at the Guaranteed Power Capacity (MW).

The "**Energy Capacity**" shall be defined as:

Energy Capacity = MVD

Where the following terms are defined as:

MV_D = Medium Voltage Main Meter reading during discharge cycle ("Gross Metering" in the metering configuration)

AX_D = Auxiliary Meter reading during the discharge cycle ("Aux Metering" in the metering configuration)

MV_C = Medium Voltage Main Meter reading during charge cycle ("Gross Metering" in the metering configuration)

AX_C = Auxiliary Meter reading during the charge cycle ("Aux Metering" in the metering configuration)

AXM = Maximum auxiliary energy consumed based on nameplate rating of the auxiliary power transformer(s)

The "**Guaranteed Storage Capacity**" shall mean the guaranteed Power Capacity set forth in the Agreement. The "**Power Capacity**" is defined as the Energy Capacity

divided by the measured time required for discharge of the Guaranteed Storage Capacity. The metered instantaneous power shall be within +/- 2% of the guaranteed power for the duration of the guaranteed power capacity test, with infrequent momentary excursions from this band being acceptable.

Energy Capacity and Power Capacity shall be calculated by the following testing procedure:

i. Rest 2 hours with cell temperatures at 25-35 °C.
ii. Charge the batteries with 0.25 cp to its cut-off voltage, then charge via constant current – constant voltage method to full charge. Record the AC energy for both the Gross Metering (MV_C) and the Aux Metering (AX_C)
iii. Allow batteries to rest for up to 30 minutes
iv. Discharge the batteries with 0.25 cp to its cut-off voltage to starting SOC using constant current method. Record the AC energy for both the Gross Metering (MV_D) and the Aux Metering (AX_D)
v. Allow batteries to rest for up to 30 minutes
vi. Repeat steps (ii) through (iv) two (2) times in total

The "**Energy Capacity**" is calculated as

$$E_D = max\{MV_{D1} + AX_{D1} - AXM_1, MV_{D2} + AX_{D2} - AXM_2, MV_{D3} + AX_{D3} - AXM_3\}$$

Guaranteed Roundtrip Efficiency Test

No later than thirty (30) days prior to the Scheduled Commercial Operation Date, and no later than thirty (30) days following the conclusion of each Contract Year thereafter for the Settlement Term, the Facility shall be capable of the Guaranteed Roundtrip Efficiency. The Roundtrip Efficiency shall be conducted in accordance with the following procedure ("Guaranteed Roundtrip Efficiency Test"):

Roundtrip Efficiency Test shall be conducted in conjunction with the Guaranteed Storage Capacity Test.

The "**Roundtrip Efficiency**" is calculated as

$$RTE = max\left\{\frac{MV_{D1}+AX_{D1}}{MV_{C1}-AX_{C1}}, \frac{MV_{D2}+AX_{D2}}{MV_{C2}-AX_{C2}}, \frac{MV_{D3}+AX_{D3}}{MV_{C3}-AX_{C3}}\right\}$$

Where the following terms are defined as:

MV_D = Medium Voltage Main Meter reading during discharge cycle

MV_C = Medium Voltage Main Meter reading during charge cycle

AX_C = Auxiliary Meter reading during charge cycle

AX_D = Auxiliary Meter reading during discharge cycle

Charge Rate Test

No later than thirty (30) days prior to the Scheduled Commercial Operation Date, the Charge Rate Test shall be performed in accordance with the following procedure ("Charge Rate Test"):

The Facility, not including auxiliary power, must be designed and capable of charging at 100% of the proposed AC power and energy capacity at the POI.

The charge rate shall be determined as part of the Roundtrip Efficiency Test.

The charge rate shall be defined as the energy capacity divided by the time required to charge the Guaranteed Storage Capacity.

Charge Rate Guarantee = $(MVC - AXC)/T_{CH}$

Where the following terms are defined as:

MVC = Medium Voltage Main Meter ("Gross Metering") reading during charge cycle

T_{CH} = Total Time to Charge

AXC = Auxiliary Meter ("Aux Metering") reading during charge cycle

Ramp Rate Test

No later than thirty (30) days prior to the Scheduled Commercial Operation Date, the Ramp Rate Test shall be performed in accordance with the following procedure ("Ramp Rate Test"):

The Facility shall be capable of responding to input signals and reaching 98% of full power charging and discharging within 200 ms. The Response Time Test is conducted concurrent with the Ramp Rate Test.

Response Time Test

No later than thirty (30) days prior to the Scheduled Commercial Operation Date, the Response Time Test shall be performed in accordance with the following procedure ("Response Time Test"):

The Facility shall be capable of responding to input signals and responding within 200 ms for the Term.

The response shall be defined as the time required for the Facility output to transition from no discharge to full rated discharge and from no charge to full rated charge when the breakers are closed and the system is on-line.

The start time shall be when the signal is received at the Facility boundary, and the end time shall be when the measured discharge power reaches 100% ±2% of the rated power when the breakers are closed and the system is on-line.

Auxiliary Load Test

No later than thirty (30) days prior to the Scheduled Commercial Operation Date, the Auxiliary Load Test shall be performed in accordance with the following procedure ("Auxiliary Load Test"):

The maximum instantaneous auxiliary power consumption of the Facility will be lower than the rating of the auxiliary power transformer. Seller shall guarantee the maximum amount of auxiliary load to be consumed by the Facility, expressed in kW, measured at the auxiliary load meter.

The auxiliary load test condition, including but not limited to ambient temperature, duty cycle will be agreed upon by Buyer and Seller. Correction curves will be allowed with the concurrence of both Parties.

Auxiliary Load Guarantee = $(Max\{AXC, AXD, AXS\})$

Where the following terms are defined:

AXC = Auxiliary Meter maximum power reading during charge cycle

AXD = Auxiliary Meter maximum power reading during discharge cycle

AXS = Auxiliary Meter maximum power reading during standby

Power Factor Test

No later than thirty (30) days prior to the Scheduled Commercial Operation Date, the Power Factor Test shall be performed in accordance with the following procedure ("Power Factor Test"):

In accordance with Exhibit A, the power factor during charge and discharge operation shall be controlled to ± 0.95 at the POI, except as may be provided in a Subsequent Purchase Order. The sizing and design requirements to meet Buyer power factor requirements.

Details of the testing will depend on Facility Site reactive power constraints and will be determined as a part of Facility Site design. Testing shall meet MRO MOD-025-02 including:

- At the real power rating equal to the real power rating of the Facility Site (i.e. ±0.95 PF at 25 MW for a 25 MW rated site)
- Testing of active power under charge and discharge conditions

Testing shall be done with approval of and in coordination with WECC and Buyer.

Noise Test

No later than thirty (30) days prior to the Scheduled Commercial Operation Date, the Noise Test shall be performed in accordance with the following procedure ("Noise Test"):

The noise shall be less than 85 decibels on the A weighted scale at a distance of 1 meter along the perimeter of the Facility. Sound shall be measured at 1.5 meters above the grade elevation.

Respondent shall review and redline the following draft agreement into the submitted proposal for the specific product type and ownership structure as defined in this RFP.

This draft Exhibit F is not comprehensive and does not constitute a binding offer, shall not form the bases for an agreement by estoppel nor otherwise, and is not conditions upon each party's receipt of all requirement management approvals (including final credit and legal approval) and all regulatory approvals. Any actions taken by a party in reliance on the terms set forth in this working draft or on statements made during negotiations pursuant to this working draft shall be at that party's own risk. Until this agreement is negotiated, approved by management, executed, delivered, and approved by all required regulatory bodies, no party shall have any other legal obligations, expressed or implied, or arising in any other manner under this working draft or in the course of negotiations.

ADDITIONAL TERMS FOR A GAS-FIRED RESOURCE

The following terms and conditions (this "Term Sheet") describes certain terms and conditions of a potential agreement between Idaho Power Company ("Buyer") and the seller proposed by the applicable bidder ("Bidder") within the applicable Bid submitted within the RFP ("Seller" and, together with Buyer, the "Parties") related to the proposed gas-based resource ("the Facility"). This Term Sheet supplements the terms of Exhibit F within the RFP. The terms set forth in this Term Sheet and the applicable agreement within Exhibit F, will establish the basis for the negotiation and execution of a definitive agreement between Buyer and Seller ("Definitive Agreement").

If Bidder is unable or unwilling to accept one or more of the terms and conditions set forth in this Term Sheet or wishes to propose any alternative or additional terms or conditions, Bidder should indicate in its Bid (i) the terms and conditions to which Bidder takes exception, describing with specificity any terms and conditions that Bidder proposes in substitution, and/or (ii) the additional terms and conditions that Bidder proposes as a supplement to the terms and conditions in this Term Sheet. Consistent with the requests within Exhibit N – Bid Format and Requirements, Bidder shall provide a description of the proposed edits or additional conditions or provide redlines to this Term Sheet and applicable agreement within Exhibit F.

The Term Sheet laid out below has three (3) sections. The first section is applicable to all gas-fired facilities. The second section is specific to Bids for BTAs, and the third section is specific to Bids for PPAs.

Terms for All Gas-Fired Resources

Term		Description of Term
1	**Facility Capacity:**	Facility provides for flexible generation with [___ MW] of net capacity (measured at the Electric Interconnection Point (as defined in item 2 below)) under Summer Conditions ("Summer Rated Capacity").
2	**Electric Interconnection and Transmission**	The "Electric Interconnection Point" will be a point where the Facility will be interconnected to the host utility, as specified by Bidder in the applicable Bid. The Electric Interconnection Point must be consistent with Bidder's generator interconnection application. Bidder will be responsible for (and will bear the full costs and risks of) the arrangement, procurement, and receipt of the interconnection, deliverability, and transmission facilities and service required for the Facility and for Full Deliverability (as defined below) of the Facility to Buyer's load. This includes, but is not limited to, the arrangement, procurement, payment for construction, installation, and readiness for energization, operation, and maintenance of any required electric interconnection facilities and any system interconnection and transmission upgrades. The Buyer will be required to pursue and procure interconnection service that equals or exceeds the Guaranteed Capacity, and full deliverability of at least the Guaranteed Capacity from the Facility to Buyer's load on a firm network resource basis for the life of the Facility, (collectively, "Full Deliverability"), where applicable.

Terms Specific to Build-Transfer Agreements

Term		Description of Term
1	**Buyer's Closing Conditions**	Seller has in place (i) the full capability to transport fuel to, and receive delivery of fuel at, the fuel interconnection point(s), and (ii) all agreements and all approvals and other authorizations necessary for transport of fuel to, and receipt of delivery of fuel at, the fuel interconnection point(s), and available for immediate use by the Facility from and after Closing
2	**Facility Performance Testing:**	The Definitive Agreement will provide for tests of the performance of the Facility, including the individual generating units, to be conducted, at Seller's expense, prior to Closing. The tests will cover (i) Guaranteed Base Capacity and Guaranteed Duct-Firing Capacity (if included as part of the Facility), (ii) Guaranteed Base Heat Rate and Guaranteed Duct-Fired Heat Rate (if duct

		firing is included as part of the Facility), (iii) reliability, (iv) specified pollutant and noise emissions, (v) operating range, and (vi) other plant performance metrics and criteria set forth in the Definitive Agreement, including compliance with heat rate curves, load-following capabilities, start-up capabilities (including start times and start fuel), ramp times/modes, minimum operating times, generation unit islanding capabilities, vibration levels, and diligence-related items. The results of the tests will be compared against the corresponding values specified in the Definitive Agreement. Final test results may give rise to liquidated damages, a reduction in the Purchase Price, and/or termination of the Definitive Agreement, as described below. Seller will not be entitled to any increase in the Purchase Price or any other compensation from Buyer if the test results indicate that performance for a particular metric or criteria is better than required by the Definitive Agreement. Testing will include the following: • The "Guaranteed Capacity" will be the sum of the Guaranteed Base Capacity and the Guaranteed Duct-Firing Capacity (if duct-firing is included as part of the Facility). The "Guaranteed Base Capacity" will be 100% of the Summer Rated Capacity of the Facility, in MW, without duct-firing (if duct-firing is included as part of the Facility), as specified by Bidder in the applicable Bid. The "Guaranteed Duct-Firing Capacity" will be applicable only if duct-firing is included as part of the Facility and will be 100% of the Summer Rated Capacity of the Facility, in MW, with duct-firing, as specified by Bidder in the applicable Bid, less the Guaranteed Base Capacity. A "Minimum Base Capacity" and "Minimum Duct-Firing Capacity" (if duct-firing is included as part of the Facility) will equal to 95% of the Guaranteed Base Capacity and Guaranteed Duct-Firing Capacity, respectively. • The "Guaranteed Base Heat Rate" will be the net heat rate of the Facility (at full load, without duct-firing if included as part of the Facility) adjusted to Summer Conditions, as specified by Bidder in the applicable Bid. The "Guaranteed Duct-Fired Heat Rate" will be the net heat rate of the duct-firing capacity of the Facility (if included as part of the Facility) at full load adjusted to Summer Conditions, as specified by Bidder in the applicable Bid. The "Maximum Duct-Fired Heat Rate" will be equal to 105% of the Guaranteed Duct-Fired Heat Rate (if duct-firing is included as part of the Facility). • The minimum overall reliability factor during the reliability test will be 94.5% and will be calculated according to a formula set forth in the Definitive Agreement. The reliability test will be a seven (7)-day test that cycles through all operating configurations and includes various start-ups and shutdowns. • The minimum operating range of the Facility is expected to be as specified by Seller in the applicable Bid. • The guaranteed emission rates for NOx, CO, SO2, PM, PM10, ammonia, greenhouse gases, and any other emission or pollutant

		specified in the Definitive Agreement for the Facility will be required to be within the limits specified in the applicable permits for the Facility and not to restrict ordinary operation of the Facility. The minimum performance characteristics specified above already include an allowance for measurement uncertainties, so Seller will not be entitled to any relief therefrom for measurement uncertainties. If the Facility does not achieve all of the minimum performance characteristics required by the Definitive Agreement, Seller will be required to retest and will not reach Closing until the Facility has achieved all such minimum performance characteristics. If the Facility does not achieve such minimum performance characteristics by the guaranteed dates defined by the Definitive Agreement, then the applicable remedies will apply. If the Facility achieves all of the minimum performance characteristics required by the Definitive Agreement but does not achieve 100% of the Guaranteed Base Capacity, Guaranteed Duct-Firing Capacity (if duct-firing is included as part of the Facility), Guaranteed Base Heat Rate, and Guaranteed Duct-Fired Heat Rate (if duct-firing is included as part of the Facility), Seller may elect to (i) retest (subject to Buyer's approval in its sole and absolute discretion, or (ii) pay to Buyer liquidated damages.

Terms Specific to Power Purchase Agreements (PPAs)

Term		Description of Term
1	**Pricing**	Pricing for PPAs will be composed of: (i) a Capacity Rate expressed in $/kW-mo; (ii) an Energy Price expressed in $/MWh; (iii) a Variable O&M Rate expressed in $/MWh; (iv) a Start-up Charge, expressed in $ per Completed Start; and (v) a Start Fuel Charge, express in $ per Completed Start. Except to the extent otherwise expressly provided in this Term Sheet or under Exhibit F, Buyer will not be required to pay any amounts to Seller other than the amounts derived from the payment structure outlined above.
2	**Contract Capacity**	The Contract Capacity means the net dependable capacity (MW) that the Facility is capable of delivering reliably to Buyer at the point of delivery, accounting for transmission losses under summer ambient conditions. The Contract Capacity will be established and adjusted consistent with performance testing required by the Definitive Agreement, including testing that will take place shortly before the start of the Delivery Term

		and at the request of the Buyer from time to time. It is expected that the Bidder provide the Contract Capacity in the applicable Bid.
3	**Capacity Rate**	The Capacity Rate (expressed in $/kW-month) for the Contract Capacity in each year of the Delivery Term will be based upon the rate specified by Bidder in the applicable Bid. The Capacity Rate can be fixed for the Delivery Term or can be escalated annually via a proposed escalation rate.
4	**Monthly Availability Requirement**	Monthly Availability Requirement will be 98% for Summer (including the months of June through August) and Winter (including the months of December through February) and 96% for all other months of the Delivery Term. The Facility's Monthly Availability shall be developed and negotiated in connection with the Definitive Agreement and will account for the following: • Will be based on Contract Capacity and calculated on a MWh basis accounting for derations and/or unavailability of the Facility during the applicable month. • Will be measured at the Energy Delivery Point and shall include any unavailability or deration resulting from the Facility, Force Majeure, fuel delivery, or due to transmission constraints. • Will include an allowance for Planned Maintenance hours. There will be a maximum number of Planned Maintenance hours for each year, informed by industry best practices and guidance from the Original Equipment Manufacturer (OEM). • Will include the potential for Seller to offer replacement capacity to offset impacts to the Facility's Monthly Availability, with the acceptance of the replacement capacity being in Buyer's sole discretion.
5	**Capacity Payment and Capacity Payment Discount**	Capacity Payment will equal the Capacity Rate multiplied by the Contract Capacity, subject to the Capacity Payment Discount described below. Capacity Payment Discount - If the Facility's Monthly Availability for a month is below the applicable Monthly Availability Requirement, a discount will apply to the Capacity Payment. The Capacity Payment Discount will be two percent (2%) of the Capacity Payment for the applicable month for each one percent (1%) shortfall to the Monthly Availability Requirement. However, to the extent the unavailability is due solely to Force Majeure, the Capacity Payment Discount will be one percent (1%) of the Capacity Payment for the applicable month for each one percent (1%) shortfall to the Monthly Availability Requirement. In no event will the Capacity Payment Discount exceed one hundred percent (100%) of the Capacity Payment for the applicable month.
6	**Energy Price**	For each MWh of energy dispatched by Buyer, injected by the Facility at

	and Energy Payment	the point of delivery, Buyer will pay the "Energy Price" for the applicable period of the Delivery Term (expressed in $/MWh). The Energy Price is expected to equal the Guaranteed Heat Rate (expressed in MMBtu (HHV)/MWh) multiplied by the applicable fuel price (expressed in $/MMBtu (HHV)). The "Guaranteed Heat Rate" (which is expected to be based on the information specified by Bidder in the applicable Bid) means the heat rate corresponding to Buyer's dispatch level during such hour; provided, however, that if, as a result of a unit contingency or other limitation, Buyer's dispatch level was limited during such hour and such limitation resulted in a higher applicable heat rate, the Guaranteed Heat Rate will be the heat rate corresponding to Buyer's dispatch that would have occurred during such hour absent such limitation. The applicable fuel price (expressed in $/MMBtu) will be, with respect to any hour of energy delivery, (1) Based on a predetermined index (expressed in $/MMBtu), to be identified within the applicable proposal, and based on a publicly available source on the gas day in which such hour occurs, or (2) For deliveries of "Intra-Day Energy" , the applicable fuel price will be the lower of (i) Seller's average purchase price for the gas (excluding any sales and use taxes and the cost of transportation and delivery) purchased by Seller and (ii) the estimated price quoted by Seller and accepted by Buyer for the gas purchased by Seller, plus the agreed upon fuel adder. The fuel adder is expected to be as specified by Bidder in the applicable Bid. For the purposes of establishing the Energy Price, "Intra-Day Energy" means, for the applicable gas day, any amount of the total energy dispatched by Buyer for delivery during such gas day after the day-ahead dispatch deadline, but excluding any increases after the day-ahead dispatch deadline resulting from increased availability of the Facility notified to Buyer after the day-ahead availability notice deadline.
7	**Variable O&M (VOM) Rate**	For each MWh of energy dispatched by Buyer and delivered to Buyer from the Facility, Buyer will pay the "Variable O&M Rate." The Variable O&M Rate (expressed in $/MWh) can be fixed for the Delivery Term or can be escalated annually via a proposed escalation rate.
8	**Start-Up Charge**	For each Completed Start, Buyer will pay the "Start-up Charge." The Start-up Charge (expressed in $ per Completed Start) for each year of the Delivery Term will be based upon the amount specified by Bidder in the applicable Bid. The Start-Up Charge can be fixed for the Delivery Term or can be escalated annually via a proposed escalation rate. "Completed Start" means a start-up of a combustion turbine at the Facility (i) required to be undertaken solely as a result of an increase in dispatch by Buyer either from 0 MW to positive MW or from less than the Minimum Dispatch Level for a multiple combustion turbine operating

		configuration to greater than or equal to the Minimum Dispatch Level for such multiple combustion turbine operating configuration and (ii) during which (a) an output level equal to the Minimum Dispatch Level for the dispatched operating configuration is achieved for at least thirty (30) consecutive minutes and (b) the Facility is released unconditionally for ramping to, and the attainment of, any higher output level dispatched by Buyer, but excluding any such start-up that follows any shutdown that is not scheduled by Buyer (such as a shutdown resulting from the occurrence of a unit contingency or other limitation on the availability of the capacity of the Facility).
9	**Start Fuel Charge**	If Bidder's Bid includes a Start Fuel Charge, then for each Completed Start, Buyer will pay the "Start Fuel Charge" equal to the applicable fuel price multiplied by the applicable start fuel amount (expressed in MMBtu (HHV)).
10	**Fuel Supply and Transport**	Without limiting Buyer's Energy Payment obligations provided in this Term Sheet, Seller will have sole responsibility for and bear the full costs (including any applicable fuel taxes) of the arrangement, procurement, transportation, nomination, delivery, storage, use, loss, and disposition of fuel for the Facility. Seller will be responsible and pay for all fuel imbalance charges and penalties arising out of or in connection with the Definitive Agreement. Seller will bear all risk associated with any decision not to procure firm fuel supply and transportation.
11	**Seller Default**	The Agreement shall include the following events of Seller Default: • The average of the Facility's Monthly Availability during any Rolling 12 Month Period is less than the Rolling 12 Month Availability Requirement of eighty-five percent (85%), where "Rolling 12 Month Period" means, as of the end of any month during the Delivery Term, the twelve (12)- month period that includes such month and the preceding eleven (11) months that occurred during the Delivery Term; Other events of default are outlined in Exhibit F and may be included in the Definitive Agreement as appropriate.

MUTUAL NONDISCLOSURE & CONFIDENTIALITY AGREEMENT

This MUTUAL NONDISCLOSURE & CONFIDENTIALITY AGREEMENT (the "Agreement") is entered into to be effective as of the day of , 20 ("Effective Date") between Idaho Power Company ("IPC") and (" "). IPC and may also be referred to individually as a "Party" and collectively as the "Parties."

BACKGROUND

The Parties desire to share certain confidential and proprietary information in order to discuss (the "Discussion").

Each Party may receive or review certain confidential and proprietary information of the other Party as part of that Discussion.

Some or all of the confidential and proprietary information shared between the Parties may contain non-public information about IPC's transmission or generation system that may be considered CEII (as defined below). IPC generally does not make such information available, consistent with certain regulatory and security requirements.

IPC and have agreed to disclose such confidential and proprietary information to each other on the condition that the information be retained in confidence according to the terms and subject to the conditions included in this Agreement.

AGREEMENT

In consideration of the mutual obligations and undertakings in this Agreement, the sufficiency of which is acknowledged, the Parties agree as follows:

1. **Definitions.** In this Agreement these words and phrases shall have the following meanings:

   1.1. Confidential Information.

   (a) All non-public, confidential, or proprietary information disclosed by the Provider to Recipient or its Representatives, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (in such cases where not so marked or designated, where it would reasonably be expected in the industry that such information would be deemed confidential), which may include (i) All information concerning Provider's and its affiliates', and their customers', suppliers', and other third parties' past, present, and future business affairs, including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies; (ii) Provider's unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property; (iii) All designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing; (iv) Any third-party confidential information included with, or incorporated in, any information provided by Provider to Recipient or its Representatives; and (v) All notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials prepared by or for Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing; and

   (b) All Critical Energy/Electric Infrastructure Information ("CEII"), as defined by the Code of Federal Regulations, Title 18, Section 388. CEII includes both Critical Energy Infrastructure Information and Critical Electric Infrastructure Information. As used in this Agreement, Critical Energy Infrastructure Information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Contains detail about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; (iv) Does not simply give the general location of the critical infrastructure.

   As used in this Agreement, Critical Electric Infrastructure Information means information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to the Federal Energy Regulatory Commission ("FERC") or other Federal agency other than classified national security information, that is designated as critical electric infrastructure information by FERC or the Secretary of the Department of Energy pursuant to section 215A(d) of the Federal Power Act.

CEII includes but is not limited to: transmission conductor details, transmission structure design details, planned or expected transmission outages critical to the power system, substation design details, control center locations or design details, power plant facility design details, geographic coordinates more specific than line routes and natural gas line locations or design details.

(c) Confidential Information shall not include Non-proprietary Information.

1.2. Non-proprietary Information. The information with respect to which the Recipient is able to establish:

(a) At the time of disclosure was or thereafter became generally available to the public, other than as a result of any act or omission by the Recipient or its Representatives or anyone to whom the Recipient or Recipient's Representatives disclosed such information in violation of this Agreement;

(b) Was or became lawfully known to the Recipient or Recipient's Representatives on a non-confidential basis and not in contravention of any applicable law from a source (other than the Provider or Provider's Representative) that is entitled to disclose the information;

(c) Was already lawfully in the possession of the Recipient or Recipient's Representatives at the time of the information's disclosure under this Agreement and that was not acquired, directly or indirectly, from the Provider or Provider's Representative, provided that, the information is not subject to another confidentiality agreement or other obligation of secrecy;

(d) Information that the Recipient can demonstrate is independently developed by the Recipient or the Recipient's Representatives without the use or knowledge of any Confidential Information; and

(e) Information approved for disclosure or release by the Recipient by written authorization from the Provider; and provided that, any combination of the information which comprises part of the Confidential Information shall not be deemed to be Non-proprietary Information merely because individual parts of that information were within the scope of the above clauses unless the combination itself was within the scope of any of the above clauses.

1.3. Provider. The Party or its Representative who is providing information to the other Party or its Representatives on behalf of the first-mentioned Party, being IPC or , as the context requires;

1.4. Recipient. The Party or its Representative that is receiving information from the other Party or its Representatives on behalf of the first-mentioned Party, being IPC or , as the context requires;

1.5. Representatives. With respect to any Party or its affiliates, such Party's or its affiliates' directors, officers, employees, shareholders, agents, subcontractors, attorneys, engineers, accountants, consultants, and financial advisers of such Party; and

1.6. Review. The Recipient's review of any Confidential Information the Provider supplies, directly or indirectly, to the Recipient or to Recipient's Representatives under this Agreement for the purposes of the Discussion.

2. **Use and Non-Disclosure**.

2.1. The Recipient shall:

(a) Keep the Confidential Information in strict confidence and not use the Confidential Information for any purpose whatsoever, directly or indirectly, other than for the purpose of conducting the Review;

(b) Disclose only such portions of the Confidential Information to its Representatives as is required for the purpose of conducting the Review and only to those Representatives who have a need to know;

(c) Be liable for any breach of this Agreement by it or any of its Representatives; and

(d) Shall in the case of disclosure of Confidential Information to any of its Representatives, inform the Representatives at the time of disclosure of the confidential and proprietary nature of the Confidential Information; and shall direct its Representatives not to disclose without the prior written consent of the Provider (i) Any opinion or comment in respect of the Confidential Information; (ii) Any terms, conditions or any facts with respect to the Discussion or the contents of this Agreement; or (iii) Any Confidential Information to any person other than in accordance with the terms of this Agreement.

3. **Required Government Disclosures**. If Recipient or its Representatives becomes legally obligated to disclose Confidential Information to any government entity with jurisdiction over it, such Recipient shall give the Provider

prompt written notice sufficient to allow the Provider to seek a protective order or other appropriate remedy. The Recipient shall disclose only such information as is required by the governmental entity and shall use its commercially reasonable efforts to obtain confidential treatment for any Confidential Information that is disclosed.

4. **Limited Relationship**. Nothing in this Agreement constitutes or implies any partnership, joint venture or any other formal or informal business relationship between the Parties or is to be construed as making one Party the agent or fiduciary of the other with respect to the Discussion.

5. **Acknowledgments by Recipient.**

   5.1. The Recipient acknowledges that:

   (a) The Confidential Information is proprietary to the Provider, and provided to the Recipient solely for the purpose of the Review, the unauthorized disclosure of which could result in financial loss to the Provider and would reasonably be expected to harm the competitive position or negotiating position of the Provider;

   (b) The provision by the Provider of any Confidential Information to any other third party does not render such Confidential Information as Non-proprietary Information;

   (c) Without prejudice to the terms and conditions of any eventual agreement or agreements relating to the Discussion (if any), neither the Provider nor the Provider's Representatives make any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information; each Provider represents and warrants to the respective Recipient that the Provider has the right and authority to disclose the Confidential Information being disclosed by it hereunder;

   (d) It will rely upon its own investigations, due diligence and analysis in evaluating and in satisfying itself as to all matters relating to the Discussion;

   (e) The Provider shall have no liability to the Recipient or any of Recipient's Representatives resulting from any use of the Confidential Information by the Recipient or any of its Representatives, except as expressly provided in this Agreement; and

   (f) No commitment or contract relating to the Discussion shall exist unless and until definitive agreements have been executed and delivered by or on behalf of the Parties.

6. **Return of Confidential Information**. At any time upon the written request of the Provider, and within five (5) business days of the request, the Recipient shall either return all copies, whether in written, electronic or other form or media, of the Confidential Information to the Provider or shall destroy and verify in writing its destruction of, any and all copies or other reproductions or extracts thereof, together with such documents, memoranda, notes and other writings whatsoever prepared by Recipient and its Representatives based on the Confidential Information provided that failure to destroy or return electronic copies of materials or summaries containing or reflecting Confidential Information that are automatically generated through data backup, archiving, and/or other similar systems shall not be deemed to violate this Agreement, so long as the Confidential Information is not disclosed or used in violation of the other terms of this Agreement.

   For clarity, the Parties covenant and agree that neither Party acquires any intellectual property rights under this Agreement.

7. **Failure or Delay Not Waiver**. It is understood and agreed by the Recipient that any failure or delay by the Provider in exercising any right, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise of any right (equitable or otherwise), power or privilege hereunder. All waivers must be in writing and signed by the waiving Party.

8. **Duration of Disclosure Period; Survival of Obligations**. This Agreement governs disclosures of Confidential Information by the Parties for a period of three years from the Effective Date ("Disclosure Period"). Notwithstanding, and regardless that the Confidential Information may have been returned or copies destroyed prior to the expiration of the Disclosure Period, the obligations of confidentiality and nondisclosure imposed by this Agreement shall survive any termination or expiration of the Disclosure Period and shall be in effect in perpetuity.

9. **Remedies; Indemnity**. The Recipient acknowledges that monetary damages may not be a sufficient remedy for a breach of this Agreement by the Recipient or any of its Representatives and agrees that in addition to any other remedy to which Provider or its affiliates may be entitled under this Agreement, at law or in equity, Provider shall be

entitled to seek injunctive relief to prevent breaches of this Agreement and to specifically enforce the terms and provisions hereof.

The Recipient agrees, to the extent allowed by law, to indemnify, defend, and hold harmless the Provider and its and their successors and their respective officers, directors, agents, and employees, from, for, and against any and all allegations, liabilities, suits, losses, damages, claims, actions, costs, and expenses of any nature, including court costs and attorneys' fees, related to the receiving Party breaching any term or condition of this Agreement.

10. **Notices**. Notices, where required herein, shall be deemed to have been duly served when (i) delivered in person, or (ii) sent by mail or courier, return receipt requested, at the address for each Party as follows:

    Idaho Power Company
    1221 W. Idaho St.
    Boise, ID USA 83702
    Attention:

    (Insert Other Party's Name and Contact Info. Here)
    (Address)
    (Address)
    Attention:

11. **Severance.** If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially unenforceable for any reason, such unenforceability will not affect the enforceability of the balance of this Agreement and all provisions of this Agreement shall, if alternative interpretations are applicable, be construed so as to preserve the enforceability hereof.

12. **Entire Agreement and Amendment.** This Agreement expresses the entire agreement between the Parties with respect to the disclosure, delivery and use of the Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties, whether written or oral, express or implied, with respect to such subject matter. This Agreement may not be modified except by a writing duly signed by both Parties.

13. **Governing Law, Etc.** This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho without giving effect to the choice of law rules thereof, and may be executed in several counterparts. The exclusive venue of any action shall be Ada County, Idaho.

14. **No Waiver of Privilege**. Unless agreed upon in writing by the Provider, neither Party intends to waive, nor cause any of its Representatives to waive, the attorney-client, attorney work product, or other applicable privilege of the Provider or any of its subsidiaries, affiliates, or joint ventures ("Privilege") by providing any information subject to a Privilege. Accordingly, each Party agrees that a production to any Recipient or any of its Representatives by the Provider or any of its Representatives of Confidential Information protected by a Privilege shall not constitute a waiver of any such Privilege by any person, and each Party hereto agrees that, upon request by the Provider or any of its Representatives, Recipient will, and will cause its Representatives to, immediately return and/or destroy such inadvertently produced information.

15. **Assignment.** Neither Party may assign all or any part of this Agreement, by operation of law or otherwise, without the other Party's prior written consent, which consent shall not be unreasonably withheld or denied. This Agreement shall be binding on and inure to the benefit of each Party's successors and assigns.

16. **Attorneys' Fees.** In the event that Provider institutes any legal suit, action or proceeding, against Recipient to enforce the covenants contained in this Agreement, Provider shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by Provider in conducting the suit, action or proceeding, including reasonable and actual attorneys' fees and expenses and court costs.

(Signature page follows)

AGREED AND ACCEPTED to be effective as of the Effective Date.

(COUNTERPARTY NAME)

By: _____

Name: _____

Title: _____

IDAHO POWER COMPANY

By: _____

Name: _____

Title: _____

Idaho Power 2032 All Source RFP
Exhibit H – Counterparty Financial Questionnaire

Please provide the following information with your proposal to enable Idaho Power (IPC) to evaluate the financial viability of the Respondent and any entity(ies) providing credit assurances on behalf of the Respondent, if applicable.

Respondent's Credit Information

1. Credit information for Respondent
    a. Exact legal name and address of Respondent.
    b. Attach copies of three years audited financial statements (including balance sheet, income statement, notes and cash flow statement) for the three most recent fiscal years.
    c. If Respondent is unable to provide audited financial statements or is relying upon another entity(ies) to provide credit assurances on its behalf, Respondent must indicate so here and complete the following section.
        i. Is Respondent unable to provide audited financial statements?
        ii. Is Respondent relying upon another entity(ies) to provide credit assurances on Respondent's behalf?
    d. If available, provide Debt Ratings from S&P and/or Moody's (please provide senior unsecured long-term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source.
    e. Identify pending legal disputes (describe). Please provide contact name, phone number and e-mail address that can assist with answering questions.
    f. State whether Respondent is or has within the past five (5) years been the debtor in any bankruptcy proceeding.
    g. Respondent should demonstrate its ability and/or the ability of its credit support provider to provide the required security equal to the value of the contract price set forth in the proposal, including its plan for doing so including type of security, sources of security, and a description of its credit support provider.
    h. Respondent should provide a reasonable demonstration of its ability to finance the proposed project based on past experience and a sound financial plan identifying the proposed sources for debt and equity and evidence that the project is financeable.

2. Credit information for entity(ies) providing credit assurances on behalf of Respondent, if applicable (e.g. parent company, or financial institution)
    a. Exact legal name and address of entity(ies) providing credit assurances on behalf of Respondent.
    b. Describe relationship to Respondent and describe type of credit assurances to be provided (e.g., parental guaranty, cash deposit, or a letter of credit from a qualified financial institution). Qualified Institution shall mean the United States office of a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof or a foreign bank with a branch office located in the United States and, in either case, whose rating with respect to its long term unsecured, unsubordinated indebtedness, is rated at least "A-" by S&P or Fitch or A3 by Moody's. Respondent must provide to IPC from the entity(ies) providing the credit assurances on behalf of the Respondent executed by an authorized signatory and indicating their form of credit assurances it will provide. It should be noted that more than one commitment letter, or more than one form of commitment letter, may be necessary.
    c. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long-term debt rating (or corporate rating if a senior unsecured long-term debt rating is unavailable). Please indicate type of rating, rating, and source:
    d. Attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years for parent companies, as applicable.
    e. Describe any pending or threatened legal disputes or claims for parent companies, as applicable.
    f. State whether entity(ies) providing credit assurances on behalf of the Respondent is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

Idaho Power 2032 All Source RFP
Exhibit H – Counterparty Financial Questionnaire

Credit Requirements

The Respondent may be required to post credit assurances equal to the value of the contract price set forth in the proposal which is expected to have a commercial operation date of no later [DATE]. IPC will require a letter from the entity providing financial assurances at the proposal submittal stating that it will provide financial assurances on behalf of the Respondent.

If necessary, the Respondent will be required to demonstrate the ability to post any required credit assurances in the form of a commitment letter from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit. IPC will require each Respondent to provide an acceptable commitment letter(s), if applicable, twenty (20) business days after the Respondent is notified that the Respondent has been selected for the Initial Shortlist. Respondent will be required to provide any necessary guaranty commitment letter from the entity(ies) providing guaranty credit assurances on behalf of the Respondent and/or any necessary letter of credit commitment letter from the financial institution providing credit assurances in the form of a Letter of Credit. Forms of commitment letters are part of this **Exhibit H**. The timing of when credit security must be posted is detailed in the Credit Security Requirements Methodology section, which is also part of this **Exhibit H**.

IPC must approve the amount, substance and issuer of all provided credit assurance.

Amount of Credit Assurances to be Posted

The RFP selected resources have the potential to expose IPC and its ratepayers to credit risk in the event a selected Respondent is unable to fulfill its obligations pursuant to the terms of an executed agreement. The credit risk profile is a function of several factors:

1. Type of resource agreement.
2. Size of resource.
3. Expected energy delivery start date.
4. Term of underlying contract.
5. Creditworthiness of Respondent and Respondent's credit support provider, if applicable.

Should the financial institution providing credit assurances on behalf of the Respondent fail to meet these minimum requirements of a qualified institution IPC will require credit assurances from a replacement financial institution that does meet the requirements.

> <u>Build Transfer Agreement</u>
>
> For all resources that involve a physical asset with appropriate step-in rights, IPC views potential credit exposure as the cost it would incur in the event the resource failed to reach commercial operation by [DATE] or the Bidder failed to fulfill its obligations at any time during the life of the contract. If the failure occurred near the expected commercial operation date, IPC would also potentially have to procure energy, capacity and other environmental attributes associated with the energy in the open market at then-prevailing market prices. IPC has determined the amount of credit assurances required for these types of transactions to be up to 100% of the purchase price, based upon nameplate project size. The credit assurance requirement will be terminated upon the project achieving commercial operation date with proven tax credit eligibility of the appropriate resource technology.

The above descriptions of IPC's potential credit exposures are not in any way intended to limit Respondent's liability with respect to obligations under any contract entered into with IPC, including without limitation, attorney's fees or other damages incurred by IPC in the event of a breach of contract by Respondent.

IPC will also explore with a Respondent, if selected, other commercial avenues to reduce security requirements, such as, but not limited to, reduction in security amounts as project development milestones are met, a stipulated acceleration of commercial operation date(s) (i.e., prior to [DATE]) or IPC's review of Respondent's underlying third-

party contractual terms, provisions and/or incentives that further support Respondent achieving commercial operations prior to [DATE].

Posting of Credit Security

Terms and conditions for the posting of security are set forth in the applicable Exhibit H - Draft Agreements for Resource Based Bids which as noted above can be negotiated relative to milestones and amounts. If applicable, the Respondent will be required to demonstrate the ability to post any required credit assurances in the form of a commitment letter from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit. Forms of commitment letters are a part of this **Exhibit H**.

Idaho Power Company's Security

Please note that IPC will not post security to support its obligations under any definitive agreement. Respondents who will require such security from IPC should not submit a proposal in response to this RFP.

Idaho Power 2032 All Source RFP
Exhibit H – Counterparty Financial Questionnaire

FORM OF GUARANTY COMMITMENT LETTER

(Must be on letterhead of Respondent's guarantor)

Idaho Power (IPC)
1221 W. Idaho Street
Boise, ID 8370s
Attn: Credit Department
Email: Credit@idahopower.com

To Whom It May Concern:

[NAME OF GUARANTOR] ("Guarantor") is [INSERT RELATIONSHIP TO RESPONDENT] ("Respondent").

In connection with Respondent's submittal in Idaho Power (IPC)'s 2032 All Source Request for Proposals (RFP) for Peak Capacity and Energy Resources, this commitment letter contains Guarantor's assurance to Idaho Power (IPC) that, should Idaho Power (IPC) enter into a transaction with Respondent arising out of any proposal submitted by Respondent in the RFP, with terms and conditions mutually acceptable to Idaho Power (IPC) and Respondent, Guarantor will at that time issue an unconditional guaranty in form and substance reasonably satisfactory to Idaho Power (IPC), and that Guarantor will guarantee all obligations of payment and performance of Respondent to Idaho Power (IPC) as Guarantor's independent obligation (up to a maximum amount of $_____, plus expenses of enforcing the guaranty).

Guarantor understands that Idaho Power (IPC) will not enter into a transaction with Respondent without said guaranty. Guarantor further understands that Idaho Power (IPC) is under no obligation to enter into any transaction with Respondent, under the RFP or otherwise.

Yours truly,

(name of committing guarantor)
(name and title of authorized officer)

Idaho Power 2032 All Source RFP
Exhibit H – Counterparty Financial Questionnaire

FORM OF LETTER OF CREDIT COMMITMENT LETTER

(Must be on letterhead of entity(ies) providing the letter of credit on behalf of the Respondent)

Idaho Power (IPC)
1221 W. Idaho Street
Boise, ID 83702
Attn: Credit Department
Email: Credit@idahopower.com

To Whom It May Concern:

In connection with Respondent's submittal in Idaho Power (IPC)'s 2032 All Source Request for Proposals (RFP) for Peak Capacity and Energy Resources, this commitment letter contains [ISSUING BANK]'s assurance to Idaho Power (IPC) that, should Idaho Power (IPC) enter into a transaction with Respondent arising out of any proposal submitted by Respondent in the RFP, with terms and conditions mutually acceptable to Idaho Power (IPC) and Respondent, [ISSUING BANK] will at that time issue an irrevocable standby letter of credit in form and substance reasonably satisfactory to Idaho Power (IPC), up to a maximum amount of $_____.

[ISSUING BANK] understands that Idaho Power (IPC) will not enter into a transaction with Respondent without said letter of credit. [ISSUING BANK] further understands that Idaho Power (IPC) is under no obligation to enter into any transaction with Respondent, under the RFP or otherwise.

Yours truly,

(name of entity(ies) providing the letter of credit)
(name of authorized officer)

IRREVOCABLE STANDBY LETTER OF CREDIT No._____

Date:

BENEFICIARY:

Idaho Power Company
1221 W. Idaho Street
Boise, Idaho 83702
Attention: Corporate Treasurer

APPLICANT:

PROJECT NAME
_____
_____
Attention: _____

Ladies and Gentlemen:

[BANK], [ADDRESS] (the "Bank") hereby establishes this Irrevocable Standby Letter of Credit (this "Letter of Credit") in favor of Idaho Power Company, an Idaho corporation (the "Beneficiary"), for the account of [APPLICANT], a [STATE OF ORGANIZATION AND FORM OF ENTITY] (the "Applicant"), in the amount of US$_____.00 (_____ United States Dollars and 00/100 only) (the "Available Amount"), effective immediately and expiring at 5:00 p.m. New York time on _____, 20__, or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day (the "Expiration Date").

For the purposes hereof, the term "Business Day" shall mean any day, other than a Saturday or Sunday, on which commercial banks are not authorized or required to be closed in the City of New York, New York.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation of the following documents at [BANK], [ADDRESS], ATTENTION: _____, on or prior to 5:00 p.m. New York time on any Business Day, on or prior to the Expiration Date:

1. The original of this Letter of Credit and all amendments thereto for endorsement thereto (or photocopies of the originals for partial drawings or for facsimile transmittals); and

2. The Drawing Certificate duly dated and issued in substantially the form of Attachment A attached hereto, duly completed and purportedly bearing the signature of an officer of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at (___) ___-____ to the attention of the [BANK DEPARTMENT]. Any claims made by facsimile must be confirmed by such person as shall be specified

Example

from time-to-time by the Bank. The facsimile transmittal shall be deemed received when confirmed to Bank by telephone at (___) ___-____. Drawings made by facsimile transmittal are deemed to be the actual presentation without the need of original signed documents.

In the event of any non-conforming presentation, we shall immediately notify Beneficiary in writing by facsimile to (___) ___-____ that the presentation has been rejected, which notice shall indicate the reason for dishonoring such presentation and shall place at the disposal of beneficiary the documents presented by Beneficiary in support of its demand for payment. Beneficiary may thereafter present documents and receive payment hereunder in the event a conforming presentation is made in accordance with the terms herein.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided*, that the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be null and void and of no force or effect.

Banking charges and all other costs and fees associated with this Letter of Credit shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified, or limited by reference to any documents, instruments, or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument, or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated herein, this Letter of Credit is subject to the International Standby Practices ISP 98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"), and as to matters not covered by the ISP, the laws of the State of Idaho (without regard to the principles of conflicts of laws thereunder).

[BANK]

By:_____
Name:
Title:

Example

ATTACHMENT A

FORM OF DRAWING CERTIFICATE

To:

[BANK]
_____
_____
_____
Attn: _____

Subject: Irrevocable Standby Letter of Credit No. _____

The undersigned _____, an authorized representative of Idaho Power Company, an Idaho corporation (the "Beneficiary"), hereby certifies to [BANK] (the "Bank"), with reference to Irrevocable Standby Letter of Credit No. _____, dated _____, 20__ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to $_____, pursuant to the terms of that certain [NAME OF AGREEMENT] between _____ and Beneficiary, dated as of _____, 20__.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of XXX AND XX/100 Dollars ($_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:
_____
_____
_____

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ___ day of _____, 20__.

IDAHO POWER COMPANY

By:_____

Example

Idaho Power 2032 All Source RFP
Exhibit I – Draft Form Letter of Credit

Name:
Title:

Example

PARENT GUARANTY OF PAYMENT

THIS GUARANTY (the "Guaranty") is made as of the day of , 20 (the "Effective Date") by , , a formed under the laws of the State of ("Guarantor") to and in favor of Idaho Power Company, a corporation formed under the laws of the State of Idaho (the "Beneficiary").

RECITALS:

A. , , a formed under the laws of the State of ("Obligor"), a wholly-owned subsidiary of Guarantor, and the Beneficiary entered into that certain [insert contract name, i.e. PPA] made the day of , 20 (which agreement, as amended from time to time after the Effective Date, is herein referred to as the "[insert contract name, i.e. PPA]") pursuant to which, *inter alia*, Obligor agreed to provide to the Beneficiary for a [insert project generation] project to be constructed in (the "Project").

B. Guarantor has agreed to guarantee to the Beneficiary the proper performance, payment and discharge of Obligor's Obligations (as defined in Section 1 hereof) by Guarantor.

C. Unless otherwise defined herein, all words and phrases used herein which are defined in the [insert contract name, i.e. PPA] shall, for the purposes hereof, have the same meanings as are respectively given thereto in the [insert contract name, i.e. PPA].

IN CONSIDERATION OF the Beneficiary entering into the [insert contract name, i.e. PPA] and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Guarantor, and intending to be legally bound hereby, Guarantor covenants to, and agrees with, the Beneficiary as follows:

1. Guaranty. Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the Beneficiary and its successors and permitted assigns, the due, punctual and complete performance, payment and discharge by Obligor of each and all of the performance, payment, indemnification and other obligations and liabilities of any and every nature and kind whatsoever, whether now in existence or hereafter arising, on the part of Obligor arising under the [insert contract name, i.e. PPA] or otherwise in relation to the transactions therein provided for (collectively, the "Obligor's Obligations").

2. Absolute Liability of Guarantor. The obligations of Guarantor hereunder are absolute, primary, direct and independent obligations and are not subject to any right of set-off, recoupment or counterclaim as against the Beneficiary. The Beneficiary is not required to exhaust its recourse against Obligor, or any other Person, or any security it may hold, or to take any other action before being entitled to demand, by written notice, payment or performance of Obligor's Obligations from Guarantor.

3. Payment; Currency. All sums payable by Guarantor hereunder shall be made in freely transferable and immediately available funds and shall be made in the currency in which Obligor's Obligations were due. If Obligor fails or refuses to pay any Obligor's Obligations when due and owing, Beneficiary may make a demand upon Guarantor (hereinafter referred to as a "Payment Demand"). A Payment Demand shall be in writing and shall specify in what manner and what amount Obligor has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay such amount and such payment shall be made to Beneficiary by Guarantor within three business (3) days after receipt of such Payment Demand. A single written Payment Demand shall be effective as to any specific default under the [insert contract name,

Example

i.e. PPA] that is capable of being cured by the payment of money during the continuance of such default and additional written demands concerning such default shall not be required until such default is cured. Beneficiary shall promptly return to Guarantor any amount paid by Guarantor if and to the extent a court of competent jurisdiction (upon final appear thereof, if any) shall have determined that such Obligor's Obligation was not payable by Guarantor.

4. No Release of Guarantor. Guarantor has no right either to terminate this Guaranty or to be released or discharged from its obligations hereunder, which obligations shall not be affected, released nor diminished for any reason whatsoever including:

(a) any release or discharge, in whole or in part, of Obligor's Obligations or any amendment or supplement to or any modification of, assignment or termination, in whole or in part, the [insert contract name, i.e. PPA];

(b) any extension or renewals of Obligor's Obligations or any change in the time, manner or place of payment or performance of Obligor's Obligations or any course of dealing by the Beneficiary with Obligor (including accepting any compromises from Obligor);

(c) the occurrence of any event of default by Obligor under the [insert contract name, i.e. PPA] or otherwise in relation to Obligor's Obligations;

(d) any taking (or any abstaining from taking) of any security or guarantee for the performance of Obligor's Obligations, in whole or in part, or the perfecting (or the failing to perfect) any such security;

(e) any exchange, surrender, substitution, loss or release of, or other dealing with, any security or guarantee from time to time held by the Beneficiary for the performance of all or any part of Obligor's Obligations;

(f) any waiver, consent or other action or inaction or any exercise or non-exercise of any right, remedy or power with respect to Obligor's Obligations;

(g) any merger, amalgamation or consolidation of Obligor into or with any other Person or any change in the corporate existence, financial condition, constitution, name, structure, business, control or ownership of Obligor;

(h) any bankruptcy, winding-up, liquidation, dissolution, insolvency, reorganization or other similar proceeding affecting Obligor or its assets or any release, stay or discharge of any Obligor's Obligations resulting therefrom;

(i) any invalidity, illegality, irregularity or unenforceability for any reason of the [insert contract name, i.e. PPA], Obligor's Obligations or any part thereof as regards Obligor;

(j) any provision of applicable Laws purporting to prohibit the payment by Obligor or Guarantor of any amount payable by Obligor in connection with Obligor's Obligations;

(k) any force majeure (other than a force majeure which, pursuant to the [insert contract name, i.e. PPA], relieves Obligor of liability for the performance of any Obligor's Obligations);

Example

(l) any lack or limitation of power, incapacity or disability on the part of Obligor to enter into the [insert contract name, i.e. PPA] or of its directors, partners or agents or any other irregularity, defect or informality on the part of Obligor in relation to Obligor's Obligations; and

(m) any other Laws or other circumstances or matters that might otherwise constitute a legal or equitable discharge or release of a surety or guarantor.

5. Waiver of Notice & Defences. Guarantor hereby waives: (a) diligence, presentment, protest, demand for payment, notice of dishonour or non-payment, notice of acceptance of this Guaranty and any other notice not expressly granted to Guarantor by this Guaranty; and (b) all defences (legal or equitable) which, if asserted, would diminish the liability of Guarantor under this Guaranty.

6. No Subrogation against Obligor. Until all obligations of Guarantor under this Guaranty are discharged: (a) Guarantor shall not assert against Obligor any claim that Guarantor now has or may hereafter have against Obligor in connection with this Guaranty or the performance by Guarantor of its obligations hereunder (provided that, Guarantor may assert any such claim if required due to the imminent expiry of an applicable limitation period or otherwise to preserve such claim but only to the extent required to preserve such claim); (b) the Beneficiary shall not be subrogated to any of Guarantor's rights in Obligor's Obligations; and (c) Guarantor agrees that it shall not exercise any rights of subrogation, reimbursement, contribution or indemnity from Obligor with respect to this Guaranty to the extent the exercise of such rights would be reasonably likely to impair the ability of Obligor to perform Obligor's Obligations.

7. Continuing Guaranty. This Guaranty is a continuing guarantee and, in the case of each of Obligor's Obligations requiring the payment of monies, this Guaranty applies to and secures any ultimate balance due or remaining due to the Beneficiary; and if, at any time, all or any part of any monies paid previously applied by the Beneficiary to any Obligor Obligation is or must be rescinded or returned by the Beneficiary for any reason whatsoever, such Obligor Obligation will, for the purposes hereof, to the extent such payment is or must be rescinded or returned, be deemed to have continued in existence and this Guaranty shall continue to be effective or be reinstated, as applicable, to such Obligor Obligation as if such application had not been made.

8. Recovery Limitation under [insert contract name, i.e. PPA]. Notwithstanding any other provision of this Guaranty all limitations of liability (including requirements to file notice of claims prior to certain specified dates in order to permit the same to be proceeded with) in favour of Obligor contained in the [insert contract name, i.e. PPA] shall apply equally to the liability of Guarantor under this Guaranty such that the Beneficiary shall not be entitled to claim any liability against (or to receive any recovery from) Guarantor in excess of that which the Beneficiary would have been entitled to recover from Obligor, in the aggregate, under the [insert contract name, i.e. PPA]. For purposes of clarity, the guaranteed obligations include to Obligor's Obligations as set forth in Section 1, together with all reasonable costs and expenses (including attorney's fees), if any, incurred by Beneficiary in enforcing its rights under this Guaranty and under the [insert contract name, i.e. PPA].

9. Entire Guaranty and No Representations. This Guaranty constitutes the entire agreement between the Beneficiary and Guarantor with respect to the guarantee by Guarantor of Obligor's Obligations herein provided for and cancels and supersedes any prior understandings and agreements with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, regarding the guarantee by Guarantor of Obligor's Obligations herein provided for other than as expressly stated and set forth in this Guaranty.

Example

10. No Assignment. Neither Guarantor nor the Beneficiary may assign its interest in this Guaranty or any of its rights and obligations hereunder without the prior written consent of the other, and, subject to the foregoing, this Guaranty enures to the benefit of, and is binding upon, Guarantor and the Beneficiary and their respective successors and permitted assigns; provided, however, that Beneficiary may assign its interest in this Guaranty, or any of its rights and obligations hereunder, to any Person that Beneficiary has the right to make an assignment to pursuant to the terms of the [insert contract name, i.e. PPA].

11. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York (without reference to conflict of laws rules). THE GUARANTOR AND BENEFICIARY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTY.

12. Notices. All notices sought or required to be given hereunder shall be in writing and shall be effectively given or made if delivered personally, sent by prepaid courier service, sent by registered/certified mail (postage fully prepaid) or sent by facsimile (with transmission confirmed), in each case to the applicable address and/or facsimile number set out below:

If to the Beneficiary:

Idaho Power Company
Attn: Legal Department
1221 W. Idaho Street
Boise, ID 83702

If to Guarantor:

or at such other address and/or facsimile number as may be given by Guarantor or the Beneficiary to the other by notice in writing from time to time and such notices shall be deemed to have been received, if delivered personally or by prepaid courier service, upon delivery, if transmitted by facsimile on or prior to 5:00 p.m. (New York, New York local time) on a Business Day, upon the completion of its transmission (and if not transmitted on a Business Day or transmitted after 5:00 p.m. (New York, New York local time) on a Business Day, then on the first Business Day following the completion of the transmission) or, if sent by registered/certified mail, four Business Days following the day of the mailing thereof; provided that if any such notice shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice shall be deemed to have been received four Business Days following the resumption of normal mail service.

13. Payment of Legal Expenses. Guarantor shall reimburse the Beneficiary for all attorney's fees, disbursements and other expenses reasonably incurred by the Beneficiary in enforcing the payment, performance or discharge of Obligor's Obligations and the obligations of Guarantor hereunder.

14. Severability. If any provision of this Guaranty is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will apply only to that provision and all other provisions of this Guaranty shall continue in full force.

Example

15. No Waiver, Remedies. No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right under this Guaranty shall operate as a waiver of it, nor does any single or partial exercise of any right under this Guaranty preclude the other or further exercise of it or any other right.

16. Termination. The liability of Guarantor under this Guaranty shall terminate and this Guaranty shall, automatically and without the need for any further act or formality whatsoever, be of no further force or effect immediately upon all of Obligor's Obligations arising at any time under the [insert contract name, i.e. PPA] having been performed, paid and discharged in full or otherwise ceasing to exist in accordance with the applicable provisions of the [insert contract name, i.e. PPA].

17. Counterparts. The Guaranty may be executed in counterparts, each of which when executed and delivered shall constitute one and the same instrument. This Agreement may be duly executed and delivered by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Person shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other executing Persons, but this Agreement shall be binding on and enforceable against the executing Person whether or not it delivers such original counterpart.

18. Further Assurances. Guarantor shall cause to be promptly and duly taken, executed and acknowledged and delivered, such further documents and instruments as Beneficiary may from time to time reasonably request in order to carry out the intent and purposes of this Guaranty.

19. Authority of Guarantor. Guarantor represents and warrants to Beneficiary that (a) it has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guaranty; (b) Guarantor has obtained any authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor that is required on the part of Guarantor for the execution and delivery of this Guaranty; and (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

AGREED AND ACCEPTED as of the Effective Date.

(COMPANY NAME)

By: _____

Name: _____

Title: _____

IDAHO POWER COMPANY

By_____

Example

Idaho Power 2032 All Source RFP
Exhibit I – Draft Form Letter of Credit

Name: _____

Title: _____

Example

Exhibit J provides example annual revenue requirements for resources of varying time periods and how the annual revenue requirement drives the Present Value of the Revenue Requirement, the levelized payment, and levelized cost of capacity or energy as would be utilized in the evaluation process.

Idaho Power 2032 All Source RFP - Exhibit J - Levelized Present Value of the Revenue Requirement Scenarios

	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6	Scenario 7	Scenario 8 [1]
	PPA (w/ 2% esc.)	BTA (20 year life)	Self Build (20 year life)	PPA (w/ 2% esc.)	BTA (35 year life)	Self Build (35 year life	Simple Cycle Combustion Turbine	Capital Finance Lease (BSA)
1	$6,570,000	$12,027,498	$12,027,498	$9,855,000	$16,189,525	$16,189,525	$19,336,483	$8,331,833
2	$6,701,400	$10,935,086	$10,935,086	$10,052,100	$14,846,663	$14,846,663	$18,688,236	$8,308,356
3	$6,835,428	$10,790,549	$10,790,549	$10,253,142	$14,544,453	$14,544,453	$18,280,308	$8,283,552
4	$6,972,137	$10,600,542	$10,600,542	$10,458,205	$14,261,137	$14,261,137	$17,884,986	$8,257,347
5	$7,111,579	$10,383,371	$10,383,371	$10,667,369	$13,832,147	$13,832,147	$17,501,489	$8,229,661
6	$7,253,811	$9,868,615	$9,868,615	$10,880,716	$13,330,741	$13,330,741	$17,129,099	$8,200,410
7	$7,398,887	$9,929,320	$9,929,320	$11,098,331	$12,829,826	$12,829,826	$16,767,155	$8,169,507
8	$7,546,865	$9,671,873	$9,671,873	$11,320,297	$13,299,992	$13,299,992	$16,415,051	$8,136,858
9	$7,697,802	$9,414,743	$9,414,743	$11,546,703	$12,967,063	$12,967,063	$16,072,231	$8,102,365
10	$7,851,758	$9,157,938	$9,157,938	$11,777,637	$12,732,852	$12,732,852	$15,738,185	$8,065,922
11	$8,008,793	$8,901,469	$8,901,469	$12,013,190	$12,499,195	$12,499,195	$15,412,447	$8,027,421
12	$8,168,969	$8,645,344	$8,645,344	$12,253,454	$12,266,107	$12,266,107	$15,094,589	$7,986,744
13	$8,332,349	$8,389,574	$8,389,574	$12,498,523	$12,033,606	$12,033,606	$14,784,222	$7,943,769
14	$8,498,996	$8,134,171	$8,134,171	$12,748,493	$11,801,710	$11,801,710	$14,480,991	$7,898,366
15	$8,668,975	$7,879,144	$7,879,144	$13,003,463	$11,570,435	$11,570,435	$14,184,573	$7,850,398
16	$8,842,355	$7,624,505	$7,624,505	$13,263,532	$11,339,802	$11,339,802	$13,894,673	$7,799,719
17	$9,019,202	$7,370,266	$7,370,266	$13,528,803	$11,109,827	$11,109,827	$13,611,027	$7,746,177
18	$9,199,586	$7,116,438	$7,116,438	$13,799,379	$10,880,533	$10,880,533	$13,333,394	$7,689,610
19	$9,383,578	$6,863,034	$6,863,034	$14,075,367	$10,651,938	$10,651,938	$13,061,557	$7,629,847
20	$9,571,249	$6,610,066	$6,610,066	$14,356,874	$10,424,063	$10,424,063	$12,795,324	$7,566,707
21				$14,644,012	$10,196,930	$10,196,930	$10,866,349	
22				$14,936,892	$9,970,561	$9,970,561	$11,868,624	
23				$15,235,630	$9,744,979	$9,744,979	$11,649,015	
24				$15,540,342	$9,520,207	$9,520,207	$11,432,120	
25				$15,851,149	$9,296,270	$9,296,270	$11,218,009	
26					$9,073,191	$9,073,191	$11,006,754	
27					$8,850,998	$8,850,998	$10,798,429	
28					$8,629,716	$8,629,716	$10,593,111	
29					$8,409,372	$8,409,372	$10,390,876	
30					$8,189,994	$8,189,994	$10,191,806	
31					$7,971,612	$7,971,612		
32					$7,754,254	$7,754,254		
33					$7,537,952	$7,537,952		
34					$7,322,737	$7,322,737		
35					$7,108,641	$7,108,641		
Total	**$159,633,720**	**$180,313,545**	**$180,313,545**	**$315,658,604**	**$382,989,029**	**$382,989,029**	**$424,481,111**	**$160,224,570**
MW	50	50	50	75	75	75	100	50
MWhs	131,400			197,100	197,100	197,100	175,200	
PV (with Discount Delay)	$85,199,474	$106,460,684	$106,460,684	$145,246,091	$170,102,326	$170,102,326	$204,953,080	$90,136,140
Levelized Payment	$7,905,234	$9,877,955	$9,877,955	$12,217,635	$12,823,766	$12,823,766	$16,152,935	$8,363,282
Levelized $/kw-month	$13.18	$16.46	$16.46	$13.58	$14.25	$14.25	$13.46	$13.94
Levelized $/MWh	$60.16			$61.99	$65.06	$65.06		
Number of Years	20	20	20	25	35	35	30	20
Product Type	Solar	BESS	BESS	Solar	Solar	Solar	Gas	BESS
Escalation	2.00%							
Discount Rate	6.78%							
Discount Delay	0.50							

Foot Notes:
1. Includes a 25% risk factor for imputed debt.

Hourly Renewable Output Template

Idaho Power 2032 All Source RFP - Exhibit K - Forecasted Hourly Renewable Output

Bidder:

[DATE]

Instructions:

On the Forecasted Output sheet, Bidders must provide the hourly P90 and P50 forecasted output for all proposed intermittent resources (e.g., solar, wind). The resources are included based on the information provided within the Bid Definition form.

Color Code:

Applicable Input: Respondent to Fill
Calculated Input: Autofill, Do not Edit
Non Applicable Input: Do not Edit

BLACK & VEATCH

Forecasted Hourly Renewable Output

Idaho Power Company 2032 All Source RFP

Color Code:

Bidder to fill
Autofill

Bidder:

			Bid (Portfolio) ID				
			Resource ID				
			Facility Name				
			Resource Type				
			Contract Capacity (MWac)				
Year	**Month**	**Day**	**Hour**	**Forecasted P90 Output (MW)** *Capped at POI Limit*	**Forecasted P50 Output (MW)** *Capped at POI Limit*	**Forecasted P90 Output (MW)** *Capped at POI Limit*	**Forecasted P50 Output (MW)** *Capped at POI Limit*
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Idaho Power 2032 All Source RFP
Exhibit L – Cyber Security Questionnaire

Please provide the following information with your proposal to enable Idaho Power (IPC) to evaluate the Cyber Security framework and assumptions, if applicable.

Required response by all Bidders and contract structures:

1. Do you have a formal Information Security Program (InfoSec SP) in place? If yes, is it based on any specific standard? (NIST, ISO/IEC, etc)

   Response

2. Do you have any recent SOC2/ISO 27001 or similar third-party audits or certification reports? If yes, can you share them with Idaho Power? If you have future plans for certifications, please describe.

   Response

3. Do you have a Cyber Security Incident Response Plan. If yes:

   a. Is it based on any specific standard (NIST, ISO/IEC, etc)?

   b. Does it include prompt notifications of affected parties?

   Response

Required response by Bidders proposing an asset purchase such as a Build-Transfer Agreement

4. Idaho Power can offer very restricted remote access to generation facilities in support of support activities and telemetry. Will your solution require remote network access, and if yes, please describe the required connectivity and the use cases utilizing that connectivity? Additionally, does your solution have any constraints that may prevent your use of a restrictive remote access model? If yes, please describe.

   Response

5. Will your solution have any cloud hosted control capabilities? (E.G., cloud based EMS.) If so, please describe.

   Response

6. Will your solution utilize any equipment manufactured by an entity incorporated in any ITAR restricted country? If yes, please describe.

   Response

7. Will your solution utilize any services for installation, support, and long-term maintenance provided by an entity incorporated in any ITAR restricted country? If yes, please describe.

   Response

Idaho Power 2032 All Source RFP
Exhibit M – Gas-Fired Resources – Fuel Questionnaire

A. *Natural Gas Transportation and Interconnection*

What interstate pipelines or utility lines have been identified for the site's gas supply and transportation interconnection?

If an **interstate pipeline** is anticipated to be tapped for transportation and/or delivery, please respond to the following questions.

Interstate Gas Pipeline	Answers
1. What is the name of the interstate pipeline being utilized?	
2. What quantity of gas will the gas-fired power plant require? What is the required pressure of the fuel supply?	
3. Do you possess firm transportation capacity on the interstate pipeline from a liquid pricing hub to the power plant? Please specify the receipt and delivery points of the firm transportation capacity (firm, counter flow, flex, interruptible). **If yes or tentative, please provide the following:** • Type of Capacity (Firm, Counter Flow, Flex, or Interruptible) • Maximum Daily Quantity (MDQ) • Capacity Expiration Date • Receipt Point • Delivery Point **If no, please explain the plan.**	
4. Does the pipeline currently have any unsubscribed firm transportation capacity to fulfill the gas requirements? If not for the full amount, what capacity is accessible to meet the power plant's online date? **If yes or tentative, please provide the following:** • Accessible Capacity for the Projected Online Date • Receipt Point • Delivery Point • Type of Contract Capacity **If no, please explain the plan.**	
5. Have you reached out to any shippers with available firm transportation capacity that could be released for the plant's requirements?	

If yes or tentative, please provide the following: • Shippers' Name(s) • Capacity Release Quantity **If no, please explain the plan.**	
6. Are there plans to participate in a future capacity expansion project? **If yes or tentative, please provide the following:** • Project Title • Timing of the Binding Open Season **Projected Online Date of the Project**	
7. What is the present status of the proposed project?	
8. Has the interstate pipeline company conducted an engineering study regarding the lateral construction? If so, please provide the details of the engineering study.	
9. Has the interstate pipeline company confirmed if FERC approval is required for the lateral construction? If so, please elaborate on how that will impact the construction timeline. 10.	
11. Has the pipeline company completed an engineering study for the interconnection lateral? **If yes, please provide the details of the engineering study:** • Interconnection location • Capacity • Facilities included • Timeline **If no, please describe the progress on the interconnection.**	
12. Has the pipeline company furnished a cost estimate for the lateral construction? If so, please provide the cost estimate.	

Idaho Power 2032 All Source RFP
Exhibit M – Gas-Fired Resources – Fuel Questionnaire

If a **gas utility distribution line** is anticipated to be tapped for transportation and/or delivery, please respond to the following questions.

Gas Utility Distribution Line	Answers
1. What is the name of the gas distribution company/utility being considered?	
2. Is the utility solely providing transportation service or also delivering gas service? (Please address questions regarding upstream transportation capacity as well.) **If it is transportation service only, please elaborate on the gas supply plan from the upstream.** **If it is bundled transportation and delivery service, please provide the details of the upstream arrangement with the utility.** • Type of Capacity Held by the Utility for Deliveries (Firm, Counterflow, Flex, Interruptible) • Maximum Daily Quantity (MDQ) • Capacity Expiration Date • Receipt Point • Delivery Point **If the utility is planning to be part of an expansion project, please describe the details of the expansion.** • Project Title • Timing of the Binding Open Season • Projected Online Date of the Project • Current Status of the Expansion Project • Utility's Planned Capacity Subscription	
3. Has the utility company conducted an engineering study regarding the lateral construction? **If so, please provide the details of the engineering study.** • Interconnection location	

• Capacity • Facilities included • Timeline	
4. Does the utility possess ample capacity on its system to fulfill the project's requirements? If yes, please provide the available capacity amount: If no, please explain the plan.	
5. Has the utility company presented a cost estimate for the lateral construction? If so, please provide the cost estimate.	
6. What is the projected timeline for the lateral construction?	

B. *Natural Gas Supply*

Natural Gas Suppliers and Marketers	Answers
1. Have third parties or multiple parties been identified to provide natural gas supplies to the plant? **If yes or tentative, please provide the following:** • Supplier(s) Name(s) • Gas Supply Amount(s) • Contract Duration • Gas Supply Hub • Gas Flow Path **If no, please explain the plan.**	
2. Does the third party have adequate firm transportation on the upstream pipeline to transport the gas from the trading hub to the project location? **If yes, please list the third-party firm contracts on the upstream pipeline.** • Type of Capacity (Self-owned Firm Transportation or Storage Contracts or Asset Management Agreement)	

• Maximum Daily Quantity (MDQ) • Capacity Expiration Date • Receipt Point • Delivery Point **If no, please explain the plan.**	
3. Have the potential terms of the gas supplies been discussed? **If yes, please list the details of the discussion terms.** • Pricing Point • Price Index (Fixed, Monthly or Daily) • Premium or Discount • Any Other Fees • Any Other Notable Terms **If no, please explain the plan.**	

Idaho Power 2032 All Source RFP
Exhibit N - Bid Format and Requirements

This Exhibit N – Bid Format and Requirements, further outlines the content and format requirements for all proposals submitted into IPC's 2032 AS RFP. Bids that do not include the information requested as described in this exhibit may be deemed ineligible for further evaluation.

All sections must be complete and in compliance with the RFP for the bid to be considered further.

GENERAL ORGANIZATION OF THE BID SUBMITTAL

All proposals must contain the following information and be organized as indicated below to facilitate timely evaluations. Each bid proposal must be as follows:

A. Section 1: Executive Summary of Proposal
   Bidder shall submit a full narrative of the proposal, including but not limited to:
   - Cover letter including general introduction and information about your company, company organization chart, and business classification;
   - Summary of project(s) contained in the proposal identifying key dates and construction milestones; detailed description of contingent technologies and project types within a selectable portfolio (for example solar + BESS); and any time based considerations that impact the viability of the proposal, including whether the COD could be delayed and whether the project is still viable (for example if the proposed COD is March 31, 2031 but a COD of September 1, 2031 would remain viable)
   - Project team identification describing how your project team is organized along with a description of the key personnel, their prior relevant experience, and how each will contribute to the project;
   - Supplemental Information including any requirement to successfully complete the project(s) consistent with the proposal, or assumptions made in developing the proposal.

B. Section 2: Bid Eligibility
   - Descriptive narrative applicable to each of the bid eligibility criteria and any specific details that should be considered as it relates to Bidder submittal relative to the Exhibit B – Bid Entry Form.

C. Section 3: Resource Based Product Non-Price Factor Narrative
   - Descriptive narrative applicable to each of the non-price factors and any specific details that should be considered as it relates to the Bidder's proposal relative to the Exhibit B – Bid Entry Form.
   - Particular interest is requested related to:
     - Environmental and Siting – Further describe what stage of development the project is in, including site control parameters, easements, permits, jurisdictional requirements, and environment mitigation.
     - Interconnection and Transmission Service – Further identify specific steps taken and what state the project development is currently in as it relates to Interconnection and Transmission Service requirements.
     - Development Schedule – Further identify a timeline and schedule including contract execution, full notice to proceed, and major engineer, procure, and construct milestones to ensure delivery at the proposed commercial operation date.
     - Bidder experience related to the bid and discussion of the proposed technology including operational success, industry adoption, whether the product is widely accepted or if it's new, and supply chain constraints or advantages.

D. Section 4: Resource Based Product Pricing Narrative
- In narrative form, detail the selectable portfolio(s) as entered in the Exhibit B – Bid Entry Form. Specifically, describe what resources are available for IPC to model in our long-term capacity expansion tool. Bidder shall describe specific pricing inputs and assumptions of what is not included related to the proposal(s) including:
  - Asset Purchase Options with price
  - Operations and Maintenance Package Pricing and Terms
  - Power Purchase Agreement Pricing with specific terms identified
  - Battery Storage Agreement Pricing with specific terms identified

E. Section 5: Market Purchase Product Narrative
- In narrative form, describe the products being offered as entered into the Exhibit B – Bid Entry Form
  - Term
  - Product being offered (WSPP Schedule C or equivalent preferred; heavy load hour or light load hour; slice; other attributes)
  - Point of Delivery, including whether bid is contingent on transmission capacity listed in Exhibit E, Table 4
  - Volume
  - Pricing
  - Western Resource Adequacy Program eligibility
  - Shaping optionality
  - Description of form of agreement

F. Section 6: Project Financing strategy, including tax credit strategy
- Plan for financing the project
  - Describe how the project will obtain sufficient funding to complete the project
    1. Level of debt and equity to be raised
       a. Describe existing relationships with large banks to help acquire the necessary funding
    2. Is a parent guarantee necessary to receive the funding?
    3. Describe plan for monetizing the tax credits
- For the asset purchase option, describe the plan and assumptions to comply with applicable requirements to match the bid pricing (for example, what assumptions exist related to tax credits and tariffs). Describe plans to comply with prevailing wage and apprenticeship requirements if applicable.

G. Section 7: Contract Terms
- Bidder shall provide a detailed issues list in narrative form pursuant to section 4.7 and 4.8 of the RFP.

H. Section 8: Technical Specifications
- For asset purchases, describe the key operating parameters and key specifications of the technology and assumptions utilized to prepare the bid. Ensure the description includes all major cost, operational, and reliability drivers that support the proposal provided within the RFP. Information included within a typical Technical Specification sheet is encouraged and preferred and should include enough detail for the Evaluation Team to assess the validity and viability of the technology and overall proposal.