

POWER PURCHASE AGREEMENT

between

**Golden Spread Electric Cooperative, Inc.
("Buyer")**

and

**[BUSINESS NAME].
("Seller")**

for the

PURCHASE OF RENEWABLE ENERGY

Dated as of [MONTH] _____, 201[]

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**POWER PURCHASE AGREEMENT
(PURCHASE OF NONFIRM ENERGY FROM QF FACILITIES)**

THIS POWER PURCHASE AGREEMENT (PURCHASE OF NONFIRM ENERGY) (“Agreement”), entered into this ___ day of _____, is between [Company Name] a (“Seller”), [Entity Type] and Golden Spread Electric Cooperative, Inc. (“Buyer”), a Texas electric cooperative corporation. Seller and Buyer are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party.”

WHEREAS, Seller intends to sell output from its (insert Nameplate Capacity of Facility) (insert facility type) facility located in (insert city), Texas (“the Facilities”);

WHEREAS, Seller has warranted and represented that it owns and will operate the Facilities and has the exclusive right to all energy and capacity from the Facilities;

WHEREAS, Seller represents that it meets the requirements to be a “Qualifying Facility” as that term is defined under applicable regulations of the Federal Regulatory Energy Commission (“FERC”);

WHEREAS, Seller desires to sell and deliver to Buyer the Output (as all such terms are hereinafter defined) from the Facilities, and Buyer desires to buy the same from Seller, under this Agreement;

WHEREAS, Seller agrees that Buyer is not purchasing any capacity under this agreement; and

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, intending to be legally bound, mutually agree as follows:

**1.
DEFINITIONS AND INTERPRETATION**

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

“AAA” is defined in Section 15.2.

“Affiliate” means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with such entity, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities (if applicable) or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer, Affiliate does not include members of Buyer.

“Avoided Costs” means the marginal costs for the Buyer to produce or purchase an additional MW of energy but for the acquisition of energy from the Seller, calculated pursuant to this Agreement.

“Bilateral Settlement Schedule” means a financial arrangement between two market participants designating the buyer, seller, MWh amount, and Settlement Location for Energy transactions.

“Billing Period” means a calendar month.

“Business Day” means any day on which banks in Dallas, Texas are not authorized or required by Requirements of Law to be closed, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Dallas, Texas.

“Buyer” is defined in the Recitals.

“Buyer Indemnities” is defined in Section 16.1.

“Calculation Period” means each measured interval integrated into an hour during the Term.

“Commercial Operation” means that all or part of the Facilities are fully operational and reliable and are fully interconnected, fully integrated, and synchronized with the Interconnection System.

“Commercial Operation Date” means the date that Commercial Operation is achieved for all or part of the Facilities.

“Day-Ahead” means the period of time starting at 0001 and ending at 2400 on the day prior to the Operating Day.

“Day-Ahead Locational Marginal Price” (“DALMP”) means for each Calculation Period used for SPP settlements, the hourly Day-Ahead Locational Marginal Price expressed in dollars per MWh for energy at a given Settlement Location as determined by the SPP through its Day-Ahead Market,

“Day-Ahead Market” means the financially binding market for energy and operating reserve that is conducted by SPP on the day prior to the Operating Day.

“Dispute Notice” is defined in Section 15.1.

“Effective Date” is the date the PPA is signed by the latter of either Buyer or Seller.

“Electric System Authority” means each of NERC, SPP, ECC, 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 geographic area in which the Facilities are located.

“**ECC**” means the interconnection or reliability coordinating council designated by NERC as responsible for enforcing electric reliability standards for the geographic area in which the Facilities are located.

“**Environmental Attributes**” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, which are deemed of value by Buyer. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides, nitrogen oxides, carbon monoxide, and other pollutants; and (2) any avoided emissions of carbon dioxide, methane, and other greenhouse gases defined by U.S. laws or regulations. Environmental Attributes do not include (i) tax incentives existing now or in the future associated with the construction, ownership or operation of the Facilities, (ii) matters designated by Buyer as sources of liability, or (iii) any adverse wildlife or environmental impacts.

“**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, or to present a material risk that as a consequence of the application of federal, state or local laws and regulations that (i) the Premises will not be available or usable for the purposes contemplated by this Agreement or (ii) the potential resulting liabilities could impair Seller’s ability to meet its obligations hereunder.

“**Event of Default**” is defined in Section 14.1.

“**Facility**” or “**Facilities**” is defined in **Exhibit F**.

“**FERC**” means the Federal Energy Regulatory Commission.

“**Final Settlement Statement**” means a statement created by the SPP at the end of the forty-seventh (47th) calendar day following the Operating Day.

“**Firm Transmission**” means the highest quality of delivery service offered under a filed rate schedule that is not subject to planned interruptions or curtailment.

“**Forced Registration Seller**” means Seller for whom SPP files with FERC an unexecuted service agreement under Section 1.2.2A(7) of Attachment AE of the SPP OATT, or any successor provision, because the Seller failed or refused to register a resource in the SPP Market.

“**Forced Registered Qualified Facility Market Charges**” (“**FRQFMC**”) means charges assessed to Buyer by SPP in connection with the Forced Registration QF’s operations in the SPP Market.

“**Generation Interconnection Agreement**” means the agreement or agreements entered into separately between Seller and Interconnection Provider concerning, among other

things, the interconnection of the Facilities to Interconnection Provider's Interconnection System via the Interconnection Facilities.

“Governmental Authority” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer, 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.

“Hazardous Materials” means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (1) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of local, state, or federal law; (2) petroleum, including any fraction, derivative or additive; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive material; (6) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (7) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (8) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (9) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (10) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

“Initial Settlement Statement” means a statement created by the SPP at the end of the seventh (7th) calendar day following the Operating Day.

“Interconnection Facilities” means all the facilities installed, or to be installed, for the purpose of interconnecting the Facilities to the Interconnection System, including electrical transmission lines, line upgrades, transformers, capacitor banks, inductor banks, and associated equipment, substations, relay and switching equipment, and safety equipment; and as further described in a Generation Interconnection Agreement.

“Interconnection Provider” means the Buyer or another person or entity that owns and/or operates the distribution and transmission lines and the other equipment and facilities to which the Seller interconnects at the Point of Delivery. Seller must have a Generation Interconnection Agreement with the Interconnection Provider.

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

“kW” means kilowatt.

“kWh” means kilowatt-hour.

“**Liabilities**” is defined in Section 16.1.

“**Mediation Location**” means Amarillo, Texas.

“**Mediation Notice**” is defined in Section 15.2.

“**Mediation Procedures**” is defined in Section 15.2.

“**Miscellaneous Amount**” is an SPP charge type which is assessed for ad hoc situations that occur where a charge or credit must be assessed for which there is no other applicable charge type. This could be due to resettlement of inappropriately calculated charges from a prior bill or to reconcile settlement disputes between counterparties.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**NAESB**” means the North American Energy Standards Board.

“**Nameplate Capacity Rating**” [Insert Nameplate Capacity Rating]

“**Negative RTLMP Period**” means the period commencing with start of the first Calculation Period in which the RTLMP is negative and ending with the start of the first Calculation Period in which the RTLMP is again zero or positive.

“**NERC**” means the North American Electric Reliability Corporation.

“**Non-firm Transmission**” delivery service reserved and scheduled on an as-available basis and is subject to interruptions or curtailment.

“**Operating Day**” means the daily period beginning at midnight for which transactions within the SPP are scheduled.

“**Operating Reserve**” means resource capacity held in reserve for resource contingencies and NERC control performance compliance.

“**Output**” means energy produced by the Facilities and sold to Buyer.

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

“**PNode**” means a ‘pricing node’, a single node in the commercial model that has a one-to-one relationship to an ENode (a physical node represented in the network model where electrical equipment and components are connected) where Locational Marginal Prices are calculated

“Point of Delivery” means the point of interconnection between the Facilities and the Interconnection System, as provided for in the applicable Generation Interconnection Agreements and as further described in **Exhibit G**. At this location Buyer accepts title to and risk of loss for the energy delivered by the Seller to the Buyer.

“Premises” means the real property on which the Facilities are or will be located, as more fully described on **Exhibit F**.

“Prevailing Time” or “PT” means Central Standard Time or Central Daylight Time, as applicable on the day in question.

“Prudent Utility Practices” means any of the practices, methods and acts engaged in or accepted by a significant portion of the electrical utility industry in the United States of America at the time the decision was made or any of the practices, methods and acts that, in the exercise of reasonable judgment in the light of the facts known or that should reasonably have been known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practices 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 possible practices, methods or acts.

“PPA” means this Power Purchase Agreement between Buyer and Seller.

“QF” or “Qualifying Facility” means a qualifying small power production facility or qualifying cogeneration facility under regulatory qualification criteria as defined in 16 U.S.C.A. § 796(17)(C) and (18)(B).

“Real-Time Balancing Market” (“RTBM”) means the market operated by SPP continuously in real-time to balance generation and load.

“Real Time Locational Marginal Price” or “RTLMP,” means for each Calculation Period used for SPP settlements, the five-minute Real Time Locational Marginal Price expressed in dollars per MWh for energy at a given Settlement Location as determined by the SPP through its Real-Time Balancing Market.

“Real-Time Out-of-Merit Amount” is an SPP charge type used to compensate resources for additional cost incurred as a result of being manually dispatched away from the optimal point. This is calculated in each settlement interval for each resource receiving an out-of-merit instruction.

“Reliability Unit Commitment (“RUC”) Make Whole Payment Distribution” is an SPP charge type that allocates costs of make-whole payment for resources committed in RUC. This is calculated hourly for each settlement location where a resource has deviations from the RUC vs. real-time actual performance.

“Reporting Month” is defined in Section 9.4.1.

“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, and includes reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

“Required Facility Documents” means all Permits, authorizations, rights and agreements now or hereafter necessary for construction, operation, and maintenance of the Facilities, and the wholesale sale of energy or capacity therefrom.

“Requirements of Law” means any applicable 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 occupational safety and health requirements).

“Revenue Neutrality Uplift Distribution Amount” is an SPP charge type that uplifts the imbalance from all other settlement charge types. This is calculated hourly for each settlement location.

“Scheduled Commercial Operation Date” means the anticipated Commercial Operation Date for the Facilities. The Scheduled Commercial Operation Date for the Facilities is the effective date of this Agreement.

“Seller” is defined in the Recitals, sometimes also referred to as QF in pricing formulas.

“Seller Indemnities” is defined in Section 16.1.

“Settlement Adjustment Charges” (“SAC”) means the sum of adjustments to the Settlement Interval to account for SPP Market charges or credits applicable to the Seller’s resource. These charges shall include Real-Time Out-of-Merit Amount, RUC Make Whole Payment Distribution, Revenue Neutrality Uplift Distribution Amount, Miscellaneous Amount, and other charges incurred under SPP Market rules, as those rules are hereafter adopted or revised.

“Settlement Interval” means the applicable period of Energy integration for the applicable market settlement function. In the Day-Ahead Market the settlement interval is hourly. In the Real-Time Balancing Market the settlement interval is each five-minutes starting with the top of each hour.

“Settlement Location” means the location defined for purpose of commercial operations and settlement in the SPP Market.

“SPP” means the Southwest Power Pool, Inc., or its successor.

“**SPP Market**” means the regional energy market administered by SPP under its Integrated Marketplace tariff, initially scheduled to begin operations in 2014, and any successor regional energy market design.

“**SPP OATT**” means the SPP Regional Open Access Transmission Tariff.

“**SPS**” means Southwestern Public Service Company, or its successor.

“**SPP Requirements**” means the instructions, tariffs, policies, rules, guidelines, procedures, protocols, standards, criteria, business practices, and all other requirements of the SPP, as applicable and as amended from time to time, including as set forth in the Tariff, the Market Protocols, business practice manuals.

“**System Emergency**” means a condition on Buyer’s system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

“**Tariff**” means the Open Access Transmission Tariff for Service Offered by the Southwest Power Pool, Inc., as revised from time to time.

“**Term**” is defined in Section 3.1.

“**Wind and Solar Agreements**” means those agreements with respect to real property that are or will be required to operate the Facilities, and which are necessary for Seller to perform any obligations hereunder.

2.

RULES OF INTERPRETATION

1. **General.** Terms used in this Agreement but not specifically defined in this Article 1 shall have meanings as commonly used in the English language and, where applicable, in Prudent Utility Practices. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in accordance with such recognized meanings. 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,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, 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”; and (h) all references to a particular tariff, law or statute mean that tariff, law or statute as amended from time to time. Each term hereof shall be construed simply 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.

2. **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.

3. **Entire Agreement.** This Agreement sets forth the full and complete understanding of the Parties relating to the subject matter hereof as of the date hereof, and supersedes any and all negotiations, agreements, understandings and representations made or dated prior thereto with respect to such subject matter.

3.

TERM; FACILITIES DEVELOPMENT

1. **Term and Termination.** The initial term of this Agreement shall continue for a period of one year from the date it is signed by the latter of Buyer or Seller. The Agreement shall continue on a year-to-year basis unless terminated as provided below. Seller may terminate this Agreement by providing written notice to the Buyer to terminate this Agreement effective upon the end of the applicable renewal period, such notice to be provided no later than 90 days prior to the noticed termination date. Buyer may terminate this Agreement if (1) Buyer's obligation to purchase the energy of the Seller is eliminated by legislation, regulation, or an order of the FERC; or (2) it becomes necessary to enter into a replacement agreement because the Public Utility Commission of Texas ("PUCT") approves changes to this standard purchase agreement. Buyer shall provide notice of termination no later than 90 days prior to the noticed termination date.

2. **Milestone and Commercial Operations.** On or before the Scheduled Commercial Operation Date Seller shall cause the Facilities to achieve Commercial Operation. To the extent that Commercial Operation has not commenced on or before the Scheduled Commercial Operation Date, then Seller may by written notice to Buyer within three (3) business days after the Scheduled Commercial Operation Date, extend the Scheduled Commercial Operation Date by no more than one-hundred-eighty (180) days. Seller shall provide written notice to Buyer stating when each of the Facilities has achieved Commercial Operation.

4.
DELIVERIES OF OUTPUT

1. **Purchase and Sale.** Except as otherwise expressly provided herein, beginning on the Effective Date Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive, the Output from the Facilities at the applicable Point of Delivery to the extent that energy is available. Seller and Buyer agree that the purchases and sale of Output do not convey title to any Environmental Attributes associated with the Output or otherwise resulting from the generation of energy by the Facilities. In the event that Buyer notifies Seller that it is interested in purchasing Seller's Environmental Attributes, Seller must offer Buyer the right of first refusal in all Environmental Attributes in the event that Seller owns the same upon the effective date of this agreement. [If the Parties agree that Buyer shall purchase Seller's Environmental Attributes, this can be addressed in an Exhibit attached to the PPA or through modification of this Section 4.1 and the Costs provisions located in Section 5]

2. **Title and Risk of Loss of Output.** Seller shall deliver Output free and clear of all liens, claims and encumbrances. Title to and risk of loss of Output shall transfer from Seller to Buyer upon its delivery to Buyer at the applicable 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. Buyer shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, Output from the Point of Delivery. Delivery of Output to Buyer on any particular day shall be subject to the provisions of this Agreement.

3. **Curtailment.** All delivery arrangements are subject to all applicable NERC reliability standards, NAESB standards, and SPP curtailment policies and procedures. Additionally, non-firm energy purchases may be interrupted in case of a System Emergency or when a hazardous condition exists if, in the Buyer's sole judgment, the continuation of such purchases would contribute to the System Emergency or hazardous condition. Upon ten (10) minutes' notice to the Seller to cease delivery of energy, non-firm energy purchases may be interrupted due to operational circumstances, including instances when the amount of energy produced by the Seller exceeds the portion of the Buyer's load that can reliably be served by said energy. The foregoing language shall be interpreted in accordance with the following principles:

1. Buyer may curtail the output of Seller only in the circumstances defined by 18 C.F.R. § 292.307 and 18 C.F.R. § 292.304(f).

2. The reference to a "hazardous condition" in this section of the Agreement refers to an event that rises to the level of a System Emergency, and does not allow Buyer to curtail Seller's energy for other reasons.

3. The "operational circumstances" referred to in this section of the Agreement addresses the low-loading condition identified in 18 C.F.R. § 292.304(f), as well as other operational circumstances that would give rise to a System Emergency.

4. The violation of federal reliability standards is ground for curtailment when such violation would cause a System Emergency.

5. Buyer will not curtail a Seller's output under the Agreement to account for transmission congestion unless the congestion gives rise to a System Emergency.

6. In administering this Agreement, Buyer will comply with the FERC-approved SPP curtailment policies and procedures, as they may be revised from time to time. The FERC-approved SPP curtailment policies and procedures currently allow curtailment of Sellers' output when transmission congestion rises to a Southwest Power Pool Transmission Loading Relief Level 5 or higher.

If transmission or distribution service is curtailed by Interconnection Provider or SPP for the reasons set forth in this "Curtailment" section of the Agreement, Buyer shall be relieved of its obligation to purchase the Seller's energy during the time the condition giving rise to the curtailment exists.

5. COSTS

1. **Interconnection 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 Points of Delivery, including transmission costs, transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider pursuant to a Generation Interconnection Agreement. Without limiting the generality of the foregoing, Seller, in accordance with a Generation Interconnection Agreement, shall bear all costs associated with the modifications to Interconnection Facilities or Interconnection System caused by or related to (a) the interconnection of the Facility or Facilities with the Interconnection System and (b) any increase in generating capacity of the Facility or Facilities.

2. **Transmission.** For purchases under this Agreement, the Buyer shall be responsible for acquiring transmission service to deliver energy from the Seller to Buyer's load. Non-firm Transmission service will be utilized during the pendency of the Firm Transmission request. If the SPP determines that no transmission upgrades are necessary for Firm Transmission service from the Seller to Buyer's load, Buyer shall procure Firm Transmission service to deliver energy from the Seller to Buyer's load. If the SPP determines that transmission upgrades are necessary for Firm Transmission service from the Seller to Buyer's load, Buyer shall continue to utilize Non-firm Transmission service to deliver energy from the Seller to Buyer's load.

3. **Station Service.** The Parties recognize that this Agreement does not provide for the supply of any electric service by Buyer to Seller or to the Facilities and Seller must enter into separate arrangements for the supply of electric services to the Facilities. The

Parties acknowledge and agree that the arrangements for the supply of electric services to the Facilities shall be separate and free-standing arrangements and that the terms of this Agreement are not binding upon the supplier of such electric services. Notwithstanding any other provision in this Agreement, nothing in the arrangements for the supply of retail electric services to the Facilities shall alter or modify Seller's or Buyer's rights duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and the supplier of such retail electric services.

4. **Costs of Ownership and Operation.** Without limiting the generality of any other provision hereof, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facilities 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 Facilities, their operation, or on or with respect to emissions or other environmental impacts of the Facilities, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or Environmental Attributes, including but not limited to sales, use, excise, ad valorem and any other similar taxes, imposed or levied by any Governmental Authority.

6. INTERCONNECTION

1. **Interconnection.** At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Facilities and the Interconnection Facilities in accordance with (i) the applicable and mandatory standards, criteria and formal guidelines of FERC, SPP, and NERC, and any successors to the functions thereof; (ii) the Permits and Required Facility Documents; (iii) the applicable Generation Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements hereof; (vi) the Wind and Solar Agreements and (vii) Prudent Utility Practices. Seller will have no claims against Buyer under this Agreement with respect to the provision of station service. Seller shall be responsible for the costs and expenses associated with interconnection of the Facilities at their Nameplate Capacity Rating at the applicable Point of Delivery, including the costs of any Interconnection System upgrades beyond the Point of Delivery necessary to interconnect the Facilities with the Interconnection System and to allow the delivery of all Output to the Point of Delivery. Seller shall have no claims hereunder against Buyer with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Interconnection Provider, in connection with a Generation Interconnection Agreement or otherwise. Seller shall be solely responsible for, and shall defend, indemnify and hold Buyer harmless against, any Liabilities arising out of Seller's performance or failure to perform under a Generation Interconnection Agreement. Seller's failure to obtain, or perform under, or breach of, a Generation Interconnection Agreement, or its other contracts and obligations to Interconnection Provider is not an event of Force Majeure.

2. **Coordination with Interconnection Provider.** Seller shall be responsible for the coordination and synchronization of the Facilities and the Interconnection Facilities with Interconnection Provider.

7. SPP MARKET REGISTRATION

1. **Registration Methods.**

7.1.1 **Sellers that Elect to Self-Register with SPP.** Any Seller that is eligible under the SPP OATT may elect to register itself in the SPP Market. If a Seller elects to register itself, Buyer shall purchase the Energy made available to Buyer by the Seller, but the Seller shall be responsible for all obligations of a registrant in the SPP Market, including settling all applicable SPP Market-related charges directly with the SPP. A self-registered Seller that intends to sell Energy to Buyer must submit a Bilateral Settlement Schedule. If Seller elects to sell Energy to Buyer on a Day-Ahead basis, Seller shall submit the Bilateral Settlement Schedule no later than 1000 Central Prevailing Time on the Day-Ahead. A Seller that submits a Bilateral Settlement Schedule after 1000 Central Prevailing Time in the Day-Ahead shall be deemed to have elected to sell its Energy to Buyer at the RTLMP. A Seller that does not submit a Bilateral Settlement Schedule shall be presumed to have chosen not to sell its Energy to Buyer. The Bilateral Settlement Schedule shall specify the portion of forecast output from the resource that the Seller elects to sell to Buyer under this PPA. A Bilateral Settlement Schedule may not be changed after the closing of the applicable market.

7.1.2 **Forced Registration Seller.** Buyer shall purchase Energy made available to Buyer by a Forced Registration Seller. Buyer will not provide resource capability information to the SPP on behalf of a Forced Registration Seller. To the extent the SPP requires resource capability information relating to a Forced Registration Seller resource, Forced Registration Seller is required to provide such information.

7.1.3 **Sellers that Elect to be Registered by Buyer.** Buyer will register a Seller in the SPP Market only if the Seller agrees to sell 100% of its energy output to Buyer. Buyer will not register a Seller that sells less than 100% of its energy output to the Buyer. If the Seller elects to have Buyer register the Seller's facilities in the SPP Market, Buyer will register the Seller in the SPP Market and will be responsible for providing the SPP with forecasts of the Seller's output and managing the resource's participation in the SPP Market. A Seller registered by the Buyer shall not settle directly with the SPP for payment of any SPP Market charges.

A Seller that elects to be registered by the Buyer shall pay a one-time registration fee of \$1,000 at the time it requests registration by the Buyer. To the extent the SPP requires resource capability information relating to Seller resources that elect to be registered by Buyer, Buyer will provide

such information to the SPP on behalf of the Seller. The Seller remains responsible for compliance with NERC standards and its obligations under the applicable Interconnection Agreements. The Seller agrees to respond to any requests from Buyer for information necessary to support such requests for information from the SPP.

8. PAYMENT

1. **Price for Energy.** Rates for purchase of non-firm energy under this Agreement are based on the Buyer's Avoided Cost of energy. The price for energy delivered by Seller to Buyer under this agreement shall be the Locational Marginal Price ("LMP") at the applicable resource PNode or if none is established then the appropriate associated PNode.

2. **Statements and Payments.** For Sellers other than Forced Registration Sellers, the Buyer shall send a monthly statement and make a payment on or before the 20th calendar day of the month following the delivery of energy. The payment will be based on data in the Initial Settlement Statement. Any changes or adjustments made in the Final Settlement Statement will be reflected in the monthly statement following such change or adjustment. The statement will show the summation of the hourly kilowatt-hours of energy delivered by the Seller, the LMP at the applicable PNode for the Settlement Interval, any applicable SAC charges or credits assessed by the SPP, the applicable monthly administrative cost assessed by the Buyer, and the total credit amount due to the Seller or the amount due to the Buyer.

For a Forced Registration Seller, Buyer shall send a monthly statement and make a payment on or before the 20th calendar day following the date on which SPP provides the information necessary to calculate the payment due to the Forced Registration Seller. The statement will show the summation of the hourly kilowatt-hours of energy delivered by the Seller, the LMP at the applicable PNODE for the Settlement Interval, any applicable SAC charges or credits assessed by the SPP, the applicable monthly administrative cost assessed by the Buyer, the FRQFMC charges, and the total credit amount due to the Seller or the amount due to the Buyer.

Payments due under this Agreement shall be paid by electronic funds transfer, or by wire transfer, as designated by Seller on Exhibit D of this Agreement. If an undisputed amount is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance.

3. **Due Date.** If the due date occurs on a date other than a business day, the late payment charge shall begin to accrue on the next succeeding business day.

4. **Late Payments.** Any late payment charge shall be due and payable within thirty days of the date it begins to accrue. The late payment charge shall be calculated by the lesser of (a) the highest rate permitted under Requirements of Law and (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.

5. **Calculation Methods.** The monthly payment to the Seller shall be the aggregate of the hourly payments for that month minus all applicable administrative charges and SPP Market related charges. Buyer's monthly administrative charge to seller for the computation, billing, and creation of the Seller's credit statement shall be \$215. For a Seller that elects to be registered by the Buyer, the monthly administrative charge will also include an additional amount of \$190 to reimburse the Buyer for forecasting and scheduling the Seller's energy. The administrative charges will be subtracted from the Seller's monthly credit statement regardless of whether the Buyer has purchased non-firm energy from the Seller during such billing period. Buyer shall pay the Seller for all energy sold to Buyer by the Seller. The method for calculating the rate payable to the Seller shall depend on whether the Seller elects to register its own facilities in the SPP Market, whether it elects for Buyer to register the Seller in the SPP Market, or whether it forces the SPP to register its facilities.

- a. **Seller that Elects to Register in SPP Market.** A Seller that elects to register its facilities in the SPP Market may sell its Energy to Buyer or may sell its Energy to other purchasers. To sell its Energy to Buyer, a self-registered Seller must submit a Bilateral Settlement Schedule quantifying the amount of Energy that the Seller intends to sell to Buyer in each interval. A Seller that elects to register its facilities in the SPP Market will receive a monthly payment that is the sum of all interval settlements for that month.

The interval settlement for each hour shall be calculated according to the following formula if the Buyer submits the Bilateral Settlement Schedule to the SPP before 1000 Central Prevailing Time on the Day-Ahead:

$$\text{Interval Settlement}_i = \text{DALMPQF}_{,i}/1000 \times \text{kWhDAQF}_{,i}$$

where:

$\text{DALMPQF}_{,i}$ = The Day-Ahead Locational Marginal Price at the PNODE associated with the Seller Facility for Settlement Interval i as expressed in dollars per MWh;

$\text{kWhDAQF}_{,i}$ = Kilowatt-hours scheduled to Buyer by Seller during Settlement Interval i of the month in the SPP Day-Ahead Market;

The settlement for each interval shall be calculated according to the following formula if the Seller submits the Bilateral Settlement Schedule to the SPP after 1000 Central Prevailing Time on the Day-Ahead:

$$\text{Interval Settlement}_i = \text{RTLMPQF}_{,i}/1000 \times \text{kWhQF}_{,i}$$

where:

RTLMP_{QF,i} = The Real-Time Locational Marginal Price at the PNODE associated with the Seller Facility for Settlement Interval i as expressed in dollars per MWh;

kWh_{QF,i} = Kilowatt-hours scheduled to Buyer by Seller during Settlement Interval i of the month in the SPP Real-Time Market;

Self-registered Sellers shall settle all other applicable SPP Market charges and credits directly with the SPP.

Self-registered Sellers shall arrange for meter output information to be provided directly to the SPP Market for settlements through the meter data agent role established in the SPP Market tariff.

DALMPs shall be calculated using hourly intervals. RTLMPs shall be calculated using five-minute intervals.

- b. Seller that Elects for the Buyer to register their facilities in the SPP Market. A Seller that elects to have Buyer register the Seller's facilities in the SPP Market will receive a monthly payment that is the sum of all interval settlements for that month. The settlement for each interval shall be calculated according to the following formula:

$$\text{Interval Settlement}_i = [(\text{RTLMP}_{\text{QF},i} / 1000) \times \text{kWh}_{\text{QF},i}] - [\text{SPP SAC}] \text{QF}_i$$

where:

RTLMP_{QF,i} = The Real-Time Locational Marginal Price at the PNODE associated with the Seller for Settlement Interval i as expressed in dollars per megawatt-hour;

kWh_{QF,i} = Kilowatt-hours delivered to Buyer by Seller during Settlement Interval i;

SPP SAC QF_i = Charges Assessed by SPP in connection with the Seller's operation in the SPP Market

Buyer shall settle with the SPP for payment of any SPP Market charges associated with Seller's resource. RTLMPs shall be calculated using five-minute intervals.

- c. Forced Registration Seller. A Forced Registration Seller will receive a monthly payment that is the sum of all interval settlements for that month.

The settlement for each interval shall be calculated according to the following formula:

$$\text{Interval Settlement}_i = [(\text{RTLMP}_{QF,i} / 1000) \times \text{kWh}_{QF,i}] - [\text{SPP SAC} + \text{FRQFMC}]_{QF,i}$$

where:

$\text{RTLMP}_{QF,i}$ = The Real-Time Locational Marginal Price at the PNODE associated with the Seller for Settlement Interval i as expressed in dollars per megawatt-hour;

$\text{kWh}_{QF,i}$ = Kilowatt-hours delivered to Buyer by Seller during Settlement Interval i ;

$\text{SPP SAC}_{QF,i}$ = Charges Assessed by SPP in connection with the Seller's operation in the SPP Market

$\text{FRQFMC}_{QF,i}$ = Forced Registered Qualified Facility Market Charges assessed to Buyer by SPP in connection with Seller's operation in the SPP Market

Buyer shall settle with the SPP for payment of any SPP Market charges associated with Forced Registration Seller's resource. RTLMPs shall be calculated using five-minute intervals.

6. **Disputed Payments.** When a billing dispute is resolved, the amount owed shall be paid within five business days of the date of resolution, with late payment charges calculated on the amount owed in accordance with the provisions of Section 8.2.

7. **Offsets.** Each party may offset against any and all amounts due and owed by it to the other party any and all undisputed amounts, including damages and other payments that are owed by the other party or that are past due under other accounts for other services relating to the sale of energy by Seller to Buyer.

9.

NOTIFICATIONS AND REPORTS

1. **Outages.** Seller will inform Buyer, via telephone to the Electric Trading Analyst specified in Exhibit B, of any major limitations, restrictions, deratings or outages known to Seller affecting the Facilities 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 Nameplate Capacity Rating of the Facilities.

2. **Scheduling.**

9.2.1 **Daily Scheduling.** Buyer may request from Seller a daily schedule of net output forecasted or awarded from the Day-Ahead Market.

9.2.2 **Cooperation and Standards.** With respect to any and all scheduling requirements hereunder, (a) Seller shall cooperate with Buyer with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives in Exhibit B 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.

3. **Electronic Communications.**

1. **Telemetry.** Seller shall provide the following data to Buyer on a real-time basis to the extent it is available to Seller on a real-time basis and Seller has a data collection system capable of providing the data to Buyer:

- a. instantaneous MW and MVAR output at the applicable Point of Delivery for each unit of the Facility or Facilities;
- b. the Facility’s total instantaneous generation output.

Seller shall also transmit to Buyer all other data from the Facility or Facilities that Seller receives on a real time basis. Seller shall provide such real time data to Buyer on the same basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals).

Seller shall provide to Buyer the data addressed in Section 10 to the extent it is available on a real-time basis either by installing, owning, operating and maintaining or causing to be installed, operated, and maintained a dedicated direct communication circuit between Buyer and Seller’s data collection system or by such other arrangement for communication equipment as the Parties may agree.

4. **Reports.**

9.4.1 **Monthly Reports.** Within thirty (30) days after the end of each calendar month during the Term (each, a “**Reporting Month**”) or such other schedule as Seller and Buyer may mutually agree to, Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facilities’ **[Insert renewable source type]** 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 Facilities’ computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facilities for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical **[Insert renewable source type]** data for the Facilities).

9.4.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facilities during each hour of the Term commencing on the Effective Date. Seller shall provide Buyer with a copy of the electronic fault log within thirty (30) days after the end of the Reporting Month to which the fault log applies.

6. **Short Range Forecasts and Updates**. Buyer may request short range availability and projected output. Upon request, Seller shall provide to Buyer by 0600 CT of each Business Day an hourly forecast of deliveries for each hour of the next three calendar days. Seller shall update a forecast provided hereunder any time information becomes available indicating a material change in the forecast of generation of Net Output from the then-current forecast.

7. **Information to Governmental Authorities**. Seller shall, promptly upon written request from Buyer, provide Buyer with all data collected by Seller related to the Facilities reasonably required by Buyer, a member of Buyer 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 Buyer copies of all submittals to Governmental Authorities or Electric System Authorities directed by Buyer and related to the operation of the Facilities with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use commercially reasonable efforts to provide this information to Buyer with sufficient advance notice to enable Buyer to review such information and meet any submission deadlines imposed by the requesting organization or entity. Upon 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 Facilities, Seller shall promptly provide to Buyer a copy of the same.

8. **Data Requests**. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving intervener status in Buyer rate proceeding or other proceeding before any Governmental Authority. Seller shall use commercially reasonable efforts to provide this information to Buyer sufficiently in advance to enable Buyer to review it and meet any submission deadlines.

10.

FACILITY OPERATIONS DATA SHARING

1. **General**. A Seller shall inform the Buyer of any planned or unplanned outage or de-rate or any other significant change to the operating capability of the Seller as soon as reasonably practicable so that the Buyer can effectively manage its obligations under this Agreement and in the SPP Market, and to provide such other information regarding the Seller as may be reasonably required. The Seller shall provide such additional information regarding its operations that the Buyer may reasonably request. For wind or solar resources, the Seller shall provide to the Buyer the operating specifications of the generating unit(s), along with historical and real-time meteorological data, unit availability, and operating data, including wind turbine operating data, for each of the units comprising the Seller. The Parties will make reasonable

efforts to implement a system to automatically communicate with onsite equipment in order to acquire data for actual monitored real-time data point information using communications mutually agreed upon by the Parties. Until such automated systems are established, upon request by the Buyer, the Seller will provide its operating specifications to the Buyer, along with historical wind speeds for wind Sellers.

2. **Solar Panel Information.** Each Seller with Solar Panels registered by Buyer shall provide the following information to Buyer: panel manufacturer(s); panel model(s) and year(s) of all panels; panel inverters and metrological instrumentation; solar power manufacturer power curve; latitude and longitude of the center of the solar panels for every inverter; longitude and latitude of the center of the solar panels for every meteorological tower; real time data for the following: inverter generation (kW), inverter ability, direct normal isolation, global horizon irradiance, ambient temperature (Celsius), barometric pressure (mb), wind speed (mps), wind direction (degrees relative to true north). The information provided shall be refreshed as frequently as allowed by the SCADA system, not to exceed sixty (60) second intervals.

3. **Wind Turbine Information.** Each Seller with wind turbines registered by Seller shall provide the following information to Buyer: turbine manufacturer(s); turbine models and year, including any prefixes and suffixes if available, Turbine Manufacturer power curve; Number of turbines; Nameplate capacity of each turbine; Hub height of the center of each turbine in meters above ground level; Rotor blade diameter of each turbine in meters; Temperature range of operation in degrees Celsius; Manufacturer, model and year of all meteorological instrumentation; Longitude and latitude of the center of the wind facility; Longitude and latitude of the met tower/nacelle anemometer; real time data for the following: Turbine generation (kW); Turbine availability; Air density; Ambient temperature; Wind speed (mps); Wind direction (in degrees relative to true north); Wind Pressure (mb)

4. **Additional Information.** Each Seller shall provide additional facilities operation information that Buyer may reasonably request.

11. METERING

1. **Metering.** The Buyer shall install at Seller's expense Metering Devices consistent with this Agreement, and any applicable Interconnection Agreement.

Any Seller with an aggregate nameplate capability of one-half (0.5) megawatt or greater shall also install telemetry equipment as required by the Buyer to ensure reliable operations.

All Metering Devices used to provide data for the computation of payments due under this Agreement shall be sealed and the seal may only be broken when the Metering Devices are to be inspected, tested, or adjusted in accordance with this Agreement. Both the Seller and the Buyer

shall be given the opportunity to be present, with at least fifteen (15) calendar days' prior notice. The number, type, and location of Metering Devices shall be configured to accurately measure power purchases by the Buyer from the Seller. Either the Seller or the Buyer shall have the right to install and maintain a back-up metering device.

The Metering Devices may be inspected and tested by the Buyer at its option at least once every (12) months while making purchases under this Agreement, and the Seller shall provide the appropriate ingress and egress to Buyer for completing such inspections according to the provisions of this Agreement.

If a Metering Device fails to register, or if the measurement made by a Metering Device is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Metering Device for both the amount of the inaccuracy and the period of the inaccuracy in the following matters:

- a. If the Metering Device is found to be defective or inaccurate, the Buyer and the Seller shall use back-up metering, if installed, to determine the amount of the inaccuracy, provided that the back-up metering has been tested and maintained in accordance with the provisions of this Agreement. If back-up metering is installed on the low side of the Seller's step-up transformer, if back-up metering is unavailable, or if back-up metering is also found to be inaccurate by more than one percent (1.0%), the Buyer and the Seller shall estimate the amount of the necessary adjustment on the basis of the sum of the metered energy adjusted for historical line losses.
- (b) If such information is not available, the estimate shall be based on deliveries of energy from the Seller during periods of similar operating conditions when the Metering Device was metered accurately. The adjustment shall be made for the period during which inaccurate measurements were made.
- c. If the Seller and the Buyer cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (a) the last one-half of the period from the last test of the Metering Device to the test that found the Metering Device to be defective or inaccurate, or (b) one hundred eighty (180) calendar days immediately preceding the test that found the Metering Device to be defective or inaccurate.
- d. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by the Buyer, the Buyer shall use the corrected measurements as determined in

accordance with this Agreement to re-compute the amount due for the period of the inaccuracy and shall subtract the previous payments by the Buyer for this period from the recomputed amount. If the difference indicates undercompensated production by the Seller, the difference shall be paid by the Buyer to the Seller; if the difference indicates over-compensation for production by the Buyer, that difference shall be paid by the Seller to the Buyer, or at the discretion of the Buyer, may take the form of a debit against payments due to the Seller by the Buyer for the subsequent Billing Period.

- e. Payment of this difference by the owing party shall be made not later than thirty (30) calendar days after the owing party receives notice of the amount due, unless the Buyer elects payment by way of an offset.

Seller shall provide at its own cost sufficient communications capabilities to allow the Buyer to remotely read the Metering Devices electronically. Buyer shall read the Metering Devices monthly. Seller shall provide the Buyer written notice within two (2) calendar days of the connection of any telephone communication hook up to the Metering Device or modifications thereto. Seller shall maintain the communication facilities and repair non-functional communication facilities within five (5) calendar days of notice from Buyer.

12.

COMPLIANCE WITH LEGAL REQUIREMENTS

1. **Compliance with Legal Requirements.** Each Seller shall be solely responsible for complying with all applicable laws and regulations that apply to the Facility and its operations, including all environmental laws and permitting requirements. Seller shall not attempt to assert that Buyer is in any way responsible for compliance with any such legal requirements by virtue of its purchases of energy under this Agreement. If Buyer is held responsible by a governmental authority for any non-compliance by the Facility with such legal requirements, Seller will be obligated to indemnify Buyer in accordance with Section 16.1.

13.
REPRESENTATIONS AND WARRANTIES

1. **Mutual Representations and Warranties.** Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that: Organization. It is duly organized and validly existing under the laws of its State of organization. Authority. It has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof. Corporate Actions. It has taken all corporate or limited liability company actions (as applicable) required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby. No Contravention. The execution and delivery hereof do 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 body having authority to which it is subject. 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. **Seller's Further Representations and Warranties.** Seller further represents, covenants, and warrants to Buyer that: Seller is duly organized and validly existing under the laws of [REDACTED] and all of Seller's Facility or Facilities meet the requirements of a Qualifying Facility under applicable FERC regulations. Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged and (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification. No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not: (i) contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any Affiliate of Seller; (ii) 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 have been obtained or are expected to be obtained in due course; or (iii) result in a breach of or constitute a default under any provision of any security issued by Seller or any Affiliate of Seller or any material agreement, instrument or undertaking to which either Seller or any Affiliate of Seller is a party or by which the property of Seller or any Affiliate of Seller is bound.

3. **Litigation.** No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against Seller or any Affiliate of Seller with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened against Seller or any Affiliate of Seller.

4. **Accuracy of Information.** No exhibit, contract, report or document furnished by Seller to Buyer in connection with this Agreement, or the negotiation or execution

hereof contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

5. **Required Facility Documents.** Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, or will hold by the Commercial Operation Date, all Permits, authorizations, rights and agreements necessary to construct, own, operate and maintain the Facilities and to deliver Net Output to Buyer in accordance with this Agreement. The anticipated use of the Facilities complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law.

6. **Wind and Solar Agreements.** Seller is a party to all Wind and Solar Agreements.

7. **Sellers Rights.** As of the Effective Date, (1) Seller owns the Facilities and has all powers and rights necessary to fulfill its obligations under this Agreement, including, but not limited to, exclusive rights to sell the Net Output to Buyer from the Facilities, and (2) that this Agreement does not conflict with any agreement Seller has with any other party. Seller further acknowledges and agrees that Buyer has not verified, and has no obligation whatsoever to verify, that Seller has all rights necessary to fulfill its obligations under this Agreement.

8. **No Other Representations or Warranties.** Each Party acknowledges that it has entered hereinto 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.

9. **Continuing Nature of Representations and Warranties; Notice; Time to Cure.** The representations and warranties set forth in this Section 13.1 are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Section 13.1 to be materially untrue or misleading, 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 such representations and warranties true and correct. The notice required pursuant to this Section 13.9 shall be given as soon as practicable after the occurrence of each such event. In any event, Seller must cure any materially untrue or misleading representations and warranties in Section 12.2 within five (5) business days of discovery.

14. DEFAULTS AND REMEDIES

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:

Defaults by Either Party.

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

b. A Party (i) makes an assignment for the benefit of its creditors (except a permitted assignment in compliance with Section 17.9); (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.

c. 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 notice of the default.

d. A Party otherwise fails to perform any material obligation hereunder if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided, however, that, upon written notice from the defaulting Party, this 30-day period shall be extended by an additional sixty (60) days if (a) the failure cannot reasonably be cured within the 30-day period despite diligent efforts, (b) the default is capable of being cured within the additional 60-day period, and (c) the defaulting Party commences the cure within the original 30-day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

Additional Defaults by Seller.

a. Seller fails to maintain all powers and rights necessary to fulfill its obligations under this Agreement, including, but not limited to, the exclusive right to sell the Net Output from the Facilities to Buyer.

b. Seller sells Net Output from the Facilities to a Party other than Buyer in breach hereof, if Seller does not permanently cease such action and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of such default.

c. Seller (i) defaults under any material agreement with a third party relating to the ownership, interconnection, operation, transmission from, maintenance or repair of the Facilities, and (ii) Seller fails to cure such default within the time required under the third-party agreement, after the expiration of applicable notice, cure and waiver periods.

d. After the Effective Date, Seller (or Facility Owners) fails to maintain any Required Facility Documents, Permits, Wind and Solar Agreements, land rights, interconnection

rights or other material rights necessary to own, operate or make wholesale sales from the Facilities, after the expiration of applicable notice, cure and waiver periods.

A Seller default described in (e) through (g) above shall be a Seller Event of Default if the default is not cured within thirty (30) days after Buyer gives Seller notice of the default; provided, however, that, upon written notice from Seller, this 30-day period shall be extended by an additional sixty (60) days if (a) the failure cannot reasonably be cured within the 30-day period despite diligent efforts, (b) the default is capable of being cured within the additional 60-day period, and (c) the Seller commences the cure within the original 30-day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

2. **Termination and Remedies.** Upon the occurrence of, and during the continuation of, an Event of Default, subject to the cure rights provided for herein, the non-defaulting Party shall be entitled to all remedies available under this agreement or at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than ten (10) days before such termination date; *provided, however*, that as a precondition to Seller's exercise of this termination right, Seller must also provide copies of such notice to the notice addresses of then-current Senior Vice President of Commercial Operations and Director of Market Operations of Buyer set forth in Exhibit B. Such copies shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested and shall state prominently therein in type font no smaller than fourteen (14) point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER THE PPA BETWEEN GSEC AND [INSERT SELLER FACILITY'S NAME]. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions, or the nature of any non-payment default alleged. Seller shall not have any right to terminate this Agreement if the Event of Default that gave rise to the termination right is cured within the fifteen (15) Business Days of Buyer's receipt of such notice. Further, during the continuation of default by Seller, and until Buyer has recovered all damages incurred on account of such default by Seller, without exercising its termination right, Buyer may offset its damages against any payment due Seller. The rights contemplated by this Section 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:

a. 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.

b. The amounts due pursuant to Section 8.2 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.

c. Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy, before and after the effective date of termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement.

3. **Termination of Duty to Buy.** If this Agreement is terminated because of a default by Seller, neither Seller nor Facility Owners may thereafter require or seek to require Buyer to purchase energy from the Facilities under PURPA (on account of its status as a QF), 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.

4. **Cumulative Remedies.** The rights and remedies provided to Buyer hereunder are cumulative and not exclusive of any rights or remedies of Buyer.

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. In the event Net Output is not purchased or accepted by Buyer, "commercially reasonable efforts" by Seller shall require Seller to use commercially reasonable efforts to maximize the price for energy received by Seller from third parties.

15. DISPUTE RESOLUTION

1. **Negotiation of Disputes and Disagreements.** The Parties shall 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 ("**Dispute Notice**"). Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such Dispute 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 sixty (60) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within thirty (30) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 15.2. All negotiations pursuant to this clause are confidential.

2. **Mediation.** If the dispute is not resolved within thirty (30) days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the rules of the American Arbitration Association (the "AAA"), as amended and effective on July 1, 2003 (the "Mediation Procedures"), notwithstanding any Dollar amounts or Dollar limitations contained therein.

(a) The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“Mediation Notice”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.

(b) The mediation shall be conducted through, by and at the office of AAA located in the Mediation Location.

(c) The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator. If the Parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA’s Arbitration Administrator shall send a list and resumes of three (3) available mediators to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both Parties have failed to respond to the AAA’s Arbitration Administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA’s Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described in this Section 15.2 and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

(d) The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 15.2. The costs of the mediation, including fees and expenses, shall be borne equally by the Parties.

(e) All verbal and written communications between the Parties issued or prepared in connection with this Section 15.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(f) The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon or after the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days after the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation.

(g) All deadlines specified in this Section 15.2 may be extended by mutual agreement.

3. **Pendency of Dispute.** Seller and Buyer acknowledge and agree that this Agreement has been made and entered into as of the date first set forth above. 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 the Agreement shall be brought exclusively in the United States District Court for the Western District of Texas, or if such court does not have jurisdiction, in the Potter County District Court in Texas. By execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such courts and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such courts 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 courts arising out of this Agreement, (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 this Agreement brought in such courts (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, and, (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.

4. **Settlement Discussions.** No statements of position or offers of settlement made in the course of the dispute process described in this Section 15.1 may 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.

5. **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.

6. **Specific Performance.** Each Party shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of the other Party hereunder. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of the other Party, and that any liability limits contained herein shall not operate

to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations hereunder. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense. Seller (or Facility Owners) shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets and Required Facility Documents relating to the Facilities to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

16. INDEMNITIES

1. INDEMNITY BY SELLER. TO THE EXTENT PERMITTED BY THE REQUIREMENTS OF LAW AND SUBJECT TO SECTION 16 , SELLER SHALL DEFEND, RELEASE, INDEMNIFY AND HOLD HARMLESS BUYER, ITS AFFILIATES AND MEMBERS, AND EACH OF ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES (COLLECTIVELY, THE "BUYER 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 ATTORNEY'S FEES, BOTH AT TRIAL AND ON APPEAL, WHETHER OR NOT SUIT IS BROUGHT) (COLLECTIVELY, "LIABILITIES") TO THE EXTENT ACTUALLY OR ALLEGEDLY RESULTING FROM, OR ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE PERFORMANCE OR DEFAULT BY SELLER OF ITS OBLIGATIONS HEREUNDER, OR RELATING TO THE FACILITIES, FOR OR ON ACCOUNT OF (I) ENVIRONMENTAL CONTAMINATION, (II) INTERFERENCE WITH OR DEATH OR INJURY TO BIRDS OR BATS, OR (III) INJURY, BODILY OR OTHERWISE, TO, OR DEATH OF, OR DAMAGE TO, OR DESTRUCTION OR ECONOMIC LOSS OF PROPERTY OF, ANY PERSON OR ENTITY, EXCEPTING ONLY TO THE EXTENT SUCH LIABILITIES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY PERSON OR ENTITY WITHIN THE BUYER INDEMNITIES. SELLER SHALL BE SOLELY RESPONSIBLE FOR (AND SHALL DEFEND AND HOLD BUYER INDEMNITIES HARMLESS AGAINST) ANY DAMAGE THAT MAY OCCUR AS A DIRECT RESULT OF SELLER'S BREACH OF A GENERATION INTERCONNECTION AGREEMENT.

2. INDEMNITY BY BUYER. TO THE EXTENT PERMITTED BY REQUIREMENTS OF LAW AND SUBJECT TO SECTION 16, BUYER SHALL DEFEND, RELEASE, INDEMNIFY AND HOLD HARMLESS SELLER, ITS AFFILIATES AND MEMBERS, AND EACH OF ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES (COLLECTIVELY, THE

“SELLER INDEMNITEES”) AGAINST AND FROM ANY AND ALL LIABILITIES TO THE EXTENT RESULTING FROM, OR ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE PERFORMANCE OR DEFAULT BY BUYER OF ITS OBLIGATIONS HEREUNDER FOR OR ON ACCOUNT OF (I) INJURY, BODILY OR OTHERWISE, TO, OR DEATH OF, OR (II) FOR DAMAGE TO, OR DESTRUCTION OR ECONOMIC LOSS OF PROPERTY OF, ANY PERSON OR ENTITY WITHIN THE SELLER INDEMNITIES, 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 SELLER INDEMNITIES.

3. **Additional Cross Indemnity.** Without limiting Sections 16.1 and 16.2, and subject to Section 16, Seller shall release, indemnify and hold harmless the Buyer Indemnities from and against all Liabilities related to Net Output prior to its delivery by Seller at the Points of Delivery, and, except as provided in Section 16.1, Buyer shall release, indemnify and hold harmless the Seller Indemnities from and against all Liabilities related to Net Output once delivered to Buyer at the Points 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 Buyer Indemnities if a member of the Buyer Indemnities is seeking indemnification under this Section 16 or by any member of the Seller Indemnities if a member of the Seller Indemnities is seeking indemnification under this Section 16.

4. **Defense.** Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Section 16 may apply, the indemnified Party shall notify the indemnifying Party in writing of such fact. The indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the indemnified Party, provided, however, that if the defendants in any such action include both the indemnified Party and the indemnifying Party and the indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the indemnifying Party, the indemnified Party shall have the right to select and be represented by separate counsel, at the indemnifying Party's expense.

5. **Failure to Defend.** If the indemnifying Party fails to assume the defense of a claim meriting indemnification, the indemnified Party may at the sole expense of the indemnifying Party, contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the indemnifying Party or, absent such consent, written opinion of the indemnified Party's counsel that such claim is meritorious or warrants settlement and, if a prospective settlement is reached, that the prospective settlement is reasonable.

6. **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 hereto. No undertaking by one Party to the other under any provision hereof shall constitute the dedication of Buyer's Facilities or any portion thereof to Seller or to the public, nor affect the status of Buyer or Seller as an independent individual or entity.

7. **Consequential Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, EXCEPT TO THE EXTENT OF A PARTY'S INDEMNIFICATION OF THE OTHER PARTY FOR THIRD PARTY 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.

8. **Limitation on Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, EXCEPT TO THE EXTENT OF A PARTY'S INDEMNIFICATION OF THE OTHER PARTY FOR THIRD PARTY DAMAGES, THE TOTAL CUMULATIVE LIABILITY OF ONE PARTY TO THE OTHER FOR ANY AND ALL CLAIMS OR DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT (WHETHER STATED IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LAW OR EQUITY) AT ANY TIME SHALL NOT EXCEED FIFTY THOUSAND DOLLARS (\$50,000), PROVIDED THAT THE LIMITATION SET FORTH HEREIN SHALL NOT APPLY TO ANY DIRECT DAMAGES SUSTAINED BY THE OTHER PARTY AS A RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LIABLE PARTY OR ITS EMPLOYEES OR AUTHORIZED AGENTS.

17.

MISCELLANEOUS PROVISIONS

1. **Several Obligations.** 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.

2. **Choice of Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the state of Texas, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

3. **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 applicable law or public policy, all other terms hereof shall remain in effect. The Parties shall use commercially reasonable 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 applicable law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

4. **No 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, whether of a like kind or different nature.

5. **Counterparts.** This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties.

6. **Survival.** The Cancellation, expiration, or earlier termination of this Agreement shall not relieve the parties of the obligations that by their nature should survive such cancellation, expiration or termination, prior to the expiration of the applicable statute of limitations, including warranties, remedies or indemnities, which shall survive for the period of the applicable statute of limitations, and obligations under law. Neither termination nor expiration of this Agreement shall affect or excuse the fulfillment of any obligation arising from acts or events that occurred while this Agreement was in effect.

7. **Further Assurances.** Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to perform the Services and to effectuate the purposes and intent of this Agreement.

8. **Governmental Jurisdiction and Authorization.** This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, or ownership of the Facilities. In the event there are unanticipated changes in FERC or Electric System Authority rules sufficiently significant to change the benefits, risks and burdens held by the Parties, the Parties shall meet in good faith to adjust the terms of this Agreement to provide for the Parties the originally intended allocation of benefits, risks and burdens.

9. **Successors and Assigns.**

a. **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.

b. **Permitted Assignments.** Notwithstanding this Section 17.9, either Party may, without the need for consent from the other Party (but with 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 any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of such Party (and, with respect to Seller, Seller shall be required to transfer or assign this Agreement to any party succeeding to all or substantially all of the assets of Seller); provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of Seller without the prior written consent of Buyer. Except with respect to collateral

assignments for financing purposes and also except as otherwise provided above in the immediately preceding sentence, in every assignment hereof, the assignee must (x) agree in writing to be bound by the terms and conditions hereof, (y) possess the same or similar experience, and possess the same or better creditworthiness, as the assignor, and (z) the assignor shall remain liable for its obligations hereunder. Buyer may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that Interconnection Provider ceases to be a load-serving entity, in which event Buyer shall be released from liability hereunder if its assignee meets the requirements of clauses (x) and (y) in the immediately preceding sentence and the requirement of clause (z) in the immediately preceding sentence shall not apply to such assignment. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment

10. **Notices/Changes of Address.** All notices, requests, statements or payments shall be made to the addresses set forth in Exhibit B. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. 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 17.10.

11. **General Operations.** At all times, the Seller shall operate, maintain, and repair its facilities in accordance with the terms of this Agreement, and any applicable SPP or NERC procedures or requirements, Prudent Utility Practice(s) and the General Interconnection Agreement. The Seller shall bear its own costs of operating, maintaining, and repairing facilities. Additionally, the Seller shall provide the Buyer with a dispatch control interface necessary to manage output as required for reliability. In the alternative, the Seller shall staff and operate its facility as required to be responsive to the Buyer's or SPP's request to curtail deliveries of non-firm energy.

12. **Duties.** Buyer and Seller incorporate the following duties into this Agreement: Seller and Buyer agree to cooperate and communicate to the extent required to ensure reliable operation of the Facility and the delivery system elements used to deliver Seller's output to Buyer's load; Each Party shall have a duty of good faith and fair dealing in the performance of the obligations in this Agreement; Each Party agrees that it has a duty to mitigate damages and to use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

AGREEMENT EXECUTION

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first set forth above by their duly authorized representatives as follows:

Buyer:

Golden Spread Electric Cooperative, Inc., a
Texas cooperative corporation
(“*Buyer*”)

Seller:

[SELLER Name] a [state of incorporation]
[organization type](“*Seller*”)

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Buyer's Initial Designated Representatives

Golden Spread Electric Cooperative, Inc. Representative:

Matt Moore

Director, Market Operations

Suite 300

905 South Fillmore

Amarillo, TX 79101-3541

Phone: 806-349-6557

Email: mmoore@gsec.coop

EXHIBIT B

Contact Information for Notice Requirements

If to Buyer:	If to Customer:
Senior Vice President, Commercial Operations Golden Spread Electric Co-op, Inc. 905 S. Fillmore, Suite 300 Amarillo, TX 79101 Telephone: Fax:	
With copies to:	With a copy to:
Director, Market Operations Golden Spread Electric Co-op, Inc. 905 S. Fillmore, Suite 300 Amarillo, TX 79101 Telephone: Fax:	
And:	And:
Electric Trading Analyst Golden Spread Electric Co-op, Inc. 905 S. Fillmore, Suite 300 Amarillo, TX 79101 Telephone: Fax:	

EXHIBIT C
REGISTRATION ELECTION

Choose one of the following:

_____ Seller elects to register its own generating facilities in the SPP Market.

_____ Seller has availed itself of the forced registration provision in Section 1.2.2A(7) of Attachment AE to the SPP OATT or any successor provision.

_____ Seller elects for Buyer to register Seller's generating facilities in the SPP Market

EXHIBIT D
METHOD OF PAYMENT ELECTION

Choose one of the following:

_____ Payments due under this Agreement shall be paid by electronic funds transfer.

_____ Payments due under this Agreement shall be paid by wire transfer.

EXHIBIT E

Environmental Attributes

[To be filled in].

EXHIBIT F

Description of Facilities and Premises

[Insert full description of the Premises]

EXHIBIT G

Points of Delivery/ Interconnection Facilities/ Metering

Point of Delivery:

The Point of Delivery shall be the interconnection of the facilities of Seller with the electrical facilities owned by [Owner],[specific location (transformer, facility id, etc.)]

Metering:

1. Metering shall be performed at the Point of Delivery. Seller shall install, own, operate and maintain or cause to be installed, operated, and maintained interval data metering and communication equipment of revenue quality and of a type that will allow measurement of data in sufficient detail to meet the requirements of this Agreement. If requested by Buyer at Buyer's discretion, Seller shall install, own, operate and maintain or cause to be installed, operated, and maintained a dedicated phone circuit to the metering equipment to allow Buyer to remotely download settlement data.

In the event that the metering equipment is out of service, the Parties shall utilize the SCADA data recorded with respect to the Point of Delivery, and in the event that such SCADA data is not available, the Parties shall promptly meet and negotiate in good faith a method for determining the amount of Net Output delivered that is consistent with Section 11.1 and fair and reasonable in the circumstances.