

**MEGAN MARKLE WIND ENERGY LLC**

**RENEWABLE ENERGY PURCHASE AGREEMENT**

Between

Megan Markle Wind Energy LLC, as Seller,

and

Pfizer Corporation,  
as Buyer

## **RENEWABLE ENERGY PURCHASE AGREEMENT**

THIS RENEWABLE ENERGY PURCHASE AGREEMENT (this “Agreement”) is made and entered into effective as of [ ] (the “Effective Date”) between Megan Markle Wind Energy LLC, a [●] (“Seller”), and Pfizer Corporation, a [●] (“Buyer”). Buyer and Seller are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

Seller intends to develop, design, construct, own and operate a wind turbine electrical generation facility on a site located in Reagan and Iron Counties, Texas, with a total expected nameplate capacity of approximately 320 MW (“Project Expected Capacity”), and further described in Schedule B (“Project”). Buyer has adopted a long-term sustainability commitment to reduce its greenhouse gas emissions, meet customer demand and enhance Buyer’s reputation. The procurement of Products under this Agreement helps Buyer achieve these goals.

Seller desires to sell, and Buyer desires to purchase the Products, on the terms and conditions set forth in this Agreement, pursuant to which (i) Buyer will realize all of the environmental and economic benefits for the Products and (ii) Seller will receive the Fixed Price for all such Products.

### **ARTICLE 1 DEFINED TERMS AND RULES OF INTERPRETATION**

1.1 Defined Terms. Initially-capitalized terms used in this Agreement and not otherwise defined in this Agreement (including in the preamble or the Recitals) will have the meanings specified in Schedule A.

1.2 Rules of Interpretation. As used in this Agreement:

(a) References to Recitals, Articles, Sections, Schedules and Exhibits are, unless otherwise indicated, Recitals of, Articles of, Sections of, Schedules to and Exhibits to this Agreement. All Schedules and Exhibits attached to this Agreement are incorporated herein and made part of this Agreement by this reference. References to a Schedule or an Exhibit will mean the referenced Schedule or Exhibit and any of its sub-schedules, sub-exhibits, sub-parts, components or attachments.

(b) The masculine gender will include the feminine and neuter and the singular number will include the plural, and vice versa.

(c) Unless expressly stated otherwise, (i) reference to any Person includes such Person’s successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, (ii) reference to a Person in a particular capacity excludes such Person in any other capacity or individuality, and (iii) reference to a Governmental Authority includes any Person succeeding to its functions and capacities.

(d) References to “days” will mean calendar days, unless the term “Business Days” is used. If the time for performing an obligation under this Agreement expires on a

day that is not a Business Day, the time will be extended until that time on the next Business Day.

(e) Relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding,” and “through” means “through and including.”

(f) Where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings.

(g) The words “herein,” “hereunder,” “hereof” and “this Agreement” refer to this Agreement, taken as a whole, and not to any particular provision of this Agreement.

(h) “Including” means “including, without limitation,” and other forms of the verb “to include” are to be interpreted similarly.

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

(j) All references to a given agreement, instrument or other document will be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. Any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement will continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect.

## **ARTICLE 2 PURCHASE AND SALE**

2.1 Sale and Purchase of Products. Beginning on the Commercial Operation Date and continuing through the end of the Term, Seller will sell, deliver or settle, as applicable, and Buyer will purchase, receive or settle, as applicable, the Products in accordance with the terms and conditions of this Agreement. Buyer will receive the Environmental Attributes (including Renewable Energy Credits) associated with the Interval Quantity in accordance with Section 4.9. Buyer will have the right to the economic benefits of all other Products; however, no physical exchange of Energy, sale of Energy, or transfer of title to Energy will occur between Buyer and Seller. Seller will sell the Interval Quantity into the NE-ISO market and the Parties will financially settle the Interval Quantity in accordance with Article 5.

## **ARTICLE 3 TERM; PROJECT DEVELOPMENT**

3.1 Term. This Agreement will become effective on the Effective Date and, unless terminated earlier as provided in this Agreement, will remain in full force and effect until midnight CPT on the 12th anniversary of the Commercial Operation Date (the “Term”).

3.2 Project Information; Notice of Construction and Seller Status Reports.

(a) Within 15 days after the Effective Date, Seller will provide Buyer with an initial written status report on (i) the progress of the design, construction and installation of the Project; (ii) all work related to achieving or complying with the terms of the Interconnection Agreement; and (iii) the status of the Approvals necessary for the Project.

(b) After the Effective Date and before the Commercial Operation Date, Seller will provide Buyer with monthly progress reports to Buyer advising Buyer of the current status of the Project, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date.

3.3 Project Development, Design and Construction. At no cost to Buyer, Seller will (i) design, engineer, construct, install, operate and maintain the Project in accordance with Prudent Industry Practices; (ii) obtain all Approvals; (iii) interconnect the Project to the NE-ISO Transmission Grid; and (iv) own, install, maintain and test all NE-ISO Approved Meters pursuant to the Interconnection Agreement.

### 3.4 Commercial Operation.

(a) Target Commercial Operation Date. Seller will use commercially reasonable efforts to cause the Project to achieve Commercial Operation on or before March 31, 2023 ("the Target Commercial Operation Date").

(b) Delay Damages. If Commercial Operation has not been achieved on or before the Target Commercial Operation Date, Seller will continue construction of the Project and pay Buyer daily liquidated damages for the delay equal to (a) (i) 80% of the Project Expected Capacity, minus (ii) the Installed Capacity, multiplied by (iii) the Buyer's Percentage, multiplied by (b) \$250 per MW ("Delay Damages"). Delay Damages will begin to accrue on the day following the Target Commercial Operation Date and continue daily until the date that Commercial Operation is achieved. The payment of Delay Damages is not a penalty.

(c) Notice of Commercial Operation. Seller will notify Buyer not less than 5 Business Days in advance of the anticipated Commercial Operation Date and will confirm to Buyer in writing when Commercial Operation has been achieved. [Nothing in this Agreement limits Seller's right or ability to declare Commercial Operation before the Target Commercial Operation Date if all requirements of Commercial Operation are satisfied before the Target Commercial Operation Date.]

(d) Capacity Shortfall. If Commercial Operation is achieved based on less than the Project Expected Capacity, then Seller will use commercially reasonable efforts to install the remaining portion of Project Expected Capacity before September 30, 2023 (the "Expected Commercial Operation Date"). If the Installed Capacity is less than the Buyer's Expected Capacity as of the Expected Commercial Operation Date, then Seller will pay Buyer damages equal to (a) Buyer's Percentage, multiplied by, (b) the Project Expected Capacity, minus (ii) the Installed Capacity, multiplied by (c) \$100,000 per MW of shortfall ("Capacity Shortfall Damages"). Buyer has the right to draw on and retain for its sole benefit the Development Security in an amount equal to the Capacity Shortfall Damages.

3.5 Right to Terminate. Subject to the provisions of Section 3.7, if the Project has not achieved Commercial Operation by the Expected Commercial Operation Date, Buyer will have the right to:

(a) Receive damages in an amount equal to the Development Security less any Delay Damages already paid to Buyer (“Early Termination Fee”), including the right to draw on and retain for its sole benefit the Development Security in an amount equal to the Early Termination Fee; and

(b) Terminate this Agreement, without liability to Buyer.

3.6 Sole Remedy. Buyer’s sole remedy and Seller’s sole liability for (i) Seller’s failure to cause the Project to achieve Commercial Operation on or before the Expected Commercial Operation Date, or Outside Commercial Operation Date, as applicable or (ii) Seller’s failure to cause the Project to achieve or Seller to declare Commercial Operation at all, is Buyer’s right to terminate and to exercise the remedies under Section 3.5.

3.7 Extension Due to Force Majeure, Interconnection and Transmission Events. The Target Commercial Operation Date and Expected Commercial Operation Date, and related damages provisions and termination rights in this Article 3, will be extended:

(a) by a number of days, up to a maximum of 12 months, equal to the duration of any Force Majeure Event that delays construction or the commencement of operation of the Project. Seller will provide initial telephonic notice of any Force Majeure within 24 hours and give written notice to Buyer describing any Force Majeure Event within 5 Business Days after the occurrence of the Force Majeure Event. The number of days of such extension will be calculated from the date on which the Force Majeure Event begins. If the Force Majeure Event will delay Commercial Operation for more than 12 months, then either Party will have the right to terminate this Agreement and neither Party will be liable to the other Party for damages as result of such termination.

(b) on a day-for-day basis, up to a maximum of 6 months, until all of the Interconnection Facilities, transmission upgrades, and new transmission facilities, if any, described in the Interconnection Agreement and required to connect the Project to the NE-ISO Transmission Grid have been completed and placed into operation by NE-ISO, except to the extent any delay in such completion and placement into operations was a result of Seller’s failure to complete its obligations, including obligations under the Interconnection Agreement, needed to ensure timely completion and operation of such interconnection facilities.

*provided* that, the Expected Commercial Operation Date, including extensions under this Section 3.7(a) and (b) or by payment of Delay Damages, may not be later than June 30, 2019 (the “Outside Commercial Operation Date”).

#### **ARTICLE 4**

### **PRODUCT GENERATION, DELIVERY AND MARKETING OBLIGATIONS**

4.1 Benefits of the Project. During the Delivery Term, Seller will own, operate and maintain the Project and otherwise perform its obligations hereunder in accordance with Prudent Industry Practices and in accordance with this Agreement. All Products will be generated and produced on a Unit Contingent basis. Seller will use commercially reasonable efforts consistent with Prudent Industry Practices to maximize the Products.

4.2 Sale of Interval Quantity. Seller will at all times during the Delivery Term, at its own cost and expense, take all actions and execute all documents or instruments necessary to effectuate the delivery and sale of the Interval Quantity into the NE-ISO market as merchant power.

4.3 Additional Products. The Parties acknowledge and agree that Additional Products may be recognized after the Effective Date and that Buyer will have the right and title to such Additional Products in accordance with this Section 4.3. If an Additional Product becomes available in the market, Seller will take commercially reasonable actions to secure for Buyer the benefits of the Additional Product including transfer of such Additional Product directly to Buyer or offering, scheduling, or auctioning such Additional Product to NE-ISO or a third party. Buyer will be responsible for all third-party costs associated with the transfer or sale of such Additional Products in accordance with the following: (i) if such activities and costs are undertaken solely to make sales of such Additional Product from the Project to Buyer, then Buyer will bear 100% of the costs; and (ii) if such activities and costs are undertaken to make sales of such Additional Product from the Project to Buyer and other Persons, then Buyer will bear such costs on a pro rata basis in accordance with Buyer's Percentage. Buyer is entitled to all revenues (net of third-party costs), received from NE-ISO or any other third party, if any, attributable to the Additional Products generated by the Project during the Delivery Term. Upon receipt by Seller, Seller will pay to Buyer all such revenues as a credit on the next invoice issued to Buyer under Article 5.

4.4 Product Management. Seller and Buyer will appoint a representative to coordinate with the other Party the implementation of this Agreement ("Authorized Representative"). The Authorized Representatives will conduct meetings on a quarterly basis or as otherwise reasonably requested by Buyer to discuss Seller's Product and Additional Product portfolio management and Product revenue strategy, relevant market conditions (including new or significant changes in Energy or Additional Product markets), and Seller's use of third party services to manage Product or Additional Product revenue for Buyer. If Buyer reasonably determines that revenue from the Product or Additional Product is materially deficient due to Seller's management strategy or use of a third party provider for the Product management services, Buyer may require Seller to change the provider of such services.

4.5 Approvals, Interconnection Agreements, and NE-ISO Compliance.

(a) Seller will obtain and maintain throughout the Delivery Term any and all interconnection rights and Approvals required to interconnect the Project to the NE-ISO Transmission Grid. The Interconnection Agreement will make available, or allocate, interconnection capacity to the Project that is no less than the Installed Capacity. Throughout the Delivery Term, Seller will maintain sufficient interconnection capacity and rights under or through the Interconnection Agreement to maintain the Project's

interconnection with the NE-ISO Transmission Grid and fulfill Seller's obligations under this Agreement.

(b) Seller will be responsible for all costs and charges under or in connection with the Interconnection Agreement and the NE-ISO Nodal Protocols in connection with the interconnection of the Project to the NE-ISO Transmission Grid.

(c) Seller will comply with the Applicable Market Rules, including securing and maintaining in full force and effect all required NE-ISO agreements, certifications and approvals.

(d) Seller will ensure that the electric Energy generation from the Project delivered at the Resource Node shall satisfy all requirements under the Renewable Energy Standard and NE-ISO Nodal Protocols for qualifying as renewable energy, subject to the cost limitations set forth in Section 11.2.

#### 4.6 Scheduling.

(a) Any and all costs incurred by Seller in connection with obtaining and maintaining a Qualified Scheduling Entity for the Project will be borne by Seller.

(b) Seller will comply with the NE-ISO Nodal Protocols, and all other Applicable Laws, applicable procedures, protocols, rules and testing as necessary for Seller to submit bids for Project Energy into the Day-Ahead or Real-Time Energy Market. Seller will be responsible for performing or engaging a Qualified Scheduling Entity to perform all Qualified Scheduling Entity functions with respect to the Project during the Delivery Term.

(c) Seller will schedule the Project as a unified resource and will apply any Curtailments on a *pro rata* basis among Buyer and other customers of Seller.

4.7 Metering Equipment. All metering and data processing equipment needed for the registration, recording and transmission of information regarding the Interval Quantity, including the NE-ISO Approved Meter, will be installed and owned, operated and maintained in accordance with the terms of the Interconnection Agreement and the NE-ISO Nodal Protocols.

4.8 Non-Settlement Periods. To mitigate the impact of negative Floating Prices on Buyer, the Interval Quantity will be deemed to equal zero megawatt-hours (0 MWh) during any Calculation Interval when the Floating Price is less than the Minimum Floating Price (each a "Non-Settlement Period"). In consideration therefor, for each Non-Settlement Period, Buyer will pay to Seller an amount (the "Make-Whole Payment") equal to the product of (X) the positive difference resulting from the subtraction of (i) the then-applicable Minimum Floating Price, from (ii) the Fixed Price, and (Y) Buyer's Percentage of the Deemed Generated Energy for such Calculation Interval; *provided* that, for purposes of calculating the Make-Whole Payment, for each MWh of Deemed Generated Energy that the Project received the Production Tax Credit, the Minimum Floating Price will equal zero Dollars (\$0).



The Make-Whole Payment will be invoiced and paid in accordance with Article 5. An example of the Make-Whole Payment calculation is provided in [Exhibit ●].

Buyer will not have any obligation to compensate Seller for lost output or lost Production Tax Credit Value if Seller decides, in its sole discretion, not to dispatch any or all of the Interval Quantity when the Real-Time price at the Resource Node is less than the Minimum Floating Price.

#### 4.9 Environmental Attributes.

(a) Transfer of Environmental Attributes. No later than the Environmental Attribute Transfer Deadline, Seller will provide and convey Environmental Attributes in an amount equal to the Interval Quantity by transferring the Environmental Attributes in accordance with Section 4.9(c).

(b) Clean Title. Seller represents and warrants that, at the time of transfer of any Environmental Attributes, (i) Seller has good and marketable title to such Environmental Attributes; (ii) such Environmental Attributes have not been sold to any other Person or used to meet compliance requirements of any other regulatory or voluntary renewable energy program or standard, including any greenhouse gas reduction requirements; and (iii) Seller will transfer to Buyer all right, title to and interest in such Environmental Attributes, free and clear of any liens or other encumbrances.

(c) Delivery of Environmental Attributes. Seller will deliver all Environmental Attributes to Buyer or a REC Certification Party, as designated by Buyer. Buyer may designate a REC Certification Party by providing 60 days advance notice to Seller. Buyer may change the REC Certification Party at any time, in its sole discretion, upon not less than 60 days advance notice to Seller. The Parties will make such filings, execute such periodic documentation and take all actions as are reasonably required to deliver documentation of Buyer's Environmental Attributes directly to the REC Certification Party through the Acceptable REC Registry. If an Acceptable REC Registry is unavailable, then Seller will deliver the Environmental Attributes to the REC Certification Party in an Environmental Attribute attestation or other legal form to be agreed to by the Parties.

(d) Registration and Verification. Seller will, at its own cost, take the actions necessary to qualify the Environmental Attributes to be transferred under the Renewable Energy Standard and Acceptable REC Registry. Seller will be responsible for all fees and charges assessed against Seller associated with qualifying the Environmental Attributes and obtaining and transferring to Buyer such Environmental Attributes (excluding (i) the fees and charges associated with registering and maintaining Buyer's account; (ii) other third-party costs assessed against Buyer; and (iii) any verification, including audit costs as provided below). Buyer will, at its own cost, take the actions necessary to receive and verify the transfer of Environmental Attributes under the Renewable Energy Standard and Acceptable REC Registry, including the costs of any audit or other verification of such transfer. Buyer will be responsible for all fees and charges assessed against Buyer (excluding the fees and charges associated with qualifying the Environmental Attributes under the Renewable Energy Standard as provided above) associated with receiving such Environmental Attributes.



4.10 Project Maintenance. Seller will operate and maintain the Project at all times in accordance with Prudent Industry Practices and in compliance with Applicable Laws. Seller will coordinate with Buyer on the scheduling of Planned Outages to minimize the downtime and maximize the performance of the Project. Within 15 days of the Effective Date and, no later than November 1 of each Contract Year thereafter, Seller will provide Buyer with notice of the Planned Outages for the following Contract Year. Seller will use commercially reasonable efforts to schedule Planned Outages to ensure that energy generation capability of the Project is not reduced by more than ten percent (10%). Buyer may, within 15 days after receipt of the schedule, request reasonable modifications to the schedule. Seller shall not during the months of June through September inclusive schedule any Planned Outages, unless (i) such outage is required to avoid damage to the Project, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, or (iii) the Parties agree otherwise in writing.

4.11 Availability Guarantee. Seller guarantees that the Project will be available to produce the Products in accordance with the provisions of Schedule C.

## **ARTICLE 5 SETTLEMENT AND INVOICING**

5.1 Monthly Settlement Amount. Each month during the Delivery Term, commencing at hour ending 0100 CPT on the first day of such month, and ending at hour ending 2400 CPT on the last day of such month (each a “Settlement Period”), Seller will calculate a single amount due from Seller to Buyer, or from Buyer to Seller, as appropriate, in accordance with the following:

Settlement Amount = (Fixed Price Payment + Make-Whole Payments, if any) minus (the Floating Price Payment + Additional Product revenues, if any)

“**Fixed Price Payment**” equals the sum over all Calculation Intervals in such Settlement Period, or portion thereof, of the product of (X) the Fixed Price for each such Calculation Interval, and (Y) the Interval Quantity for each such Calculation Interval.

“**Floating Price Payment**” equals the sum over all Calculation Intervals in such Settlement Period, or portion thereof, of the product of (X) the Floating Price for each such Calculation Interval, and (Y) the Interval Quantity for each such Calculation Interval. For the avoidance of doubt, the Floating Price Payment may be positive or negative.

“**Floating Price**” means the Locational Marginal Price in the Real-Time Energy Market price for electricity at the Settlement Point for each Calculation Interval.

“**Fixed Price**” means \$21.40/MWh, escalated by 1% per year on each anniversary of the Commercial Operation Date.

(i) If the Monthly Settlement Amount for the Settlement Period is positive, such Settlement Amount will be payable from Buyer to Seller, (ii) if the Settlement Amount for the Settlement Period is negative, the absolute value of the Settlement Amount will be payable from Seller to

Buyer; (iii) if the Monthly Settlement Amount is zero, then no payment will be due from either Party. An example of the Settlement Amount calculation is provided in [Exhibit ●].

5.2 Monthly Settlement. Within 10 days following the end of each Settlement Period, Seller will deliver to Buyer a settlement statement setting forth the following information along with any other documentation reasonably requested by Buyer to verify the settlement statement:

- (a) the Interval Quantity;
- (b) the applicable Fixed Price and Floating Price for each hour;
- (c) Make-Whole Payment calculations;
- (d) Additional Product revenue;
- (e) Wind speed and power curve data;
- (f) Available Hours.

If payment is due from Buyer to Seller, Seller will include a separate invoice to Buyer along with the settlement statement.

5.3 Payment Date. The “Payment Date” for any Monthly Settlement Amount due from Seller will be on or before 30 days following the end of the relevant Settlement Period; the “Payment Date” for any Monthly Settlement Amount due from Buyer will be the later of (a) 30 days after the end of the applicable Settlement Period, or (b) 30 days following receipt of Seller’s invoice in accordance with Sections 5.2. If the Payment Date does not fall on a Business Day, then the payment will be due on the next following Business Day. Payment of the Monthly Settlement Amount by Buyer or Seller, as applicable, will be made by electronic funds transfer in accordance with the wire transfer instructions set forth in Schedule D.

5.4 Taxes. Seller will be responsible for any and all present or future Taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Project, or any components or appurtenances thereof. In all events, property Taxes or special assessments that may be levied upon the Project as well as state or local sales Taxes applicable to the construction, maintenance, repair or operation of the Project will be borne by the Seller, and paid by Seller when due. Buyer will pay any and all sales, use, excise, transfer and other similar Taxes arising out of or with respect to the purchase by Buyer or sale to Buyer of the Products, as well as any and all ad valorem Taxes, but excluding in all events Taxes based on or measured by gross revenue or net income or other Taxes that are imposed by any Taxing authority on Seller arising out of or with respect to the sale of the Products. The Parties will cooperate to minimize Tax exposure, *provided* that neither Party will be obligated to incur any financial burden to reduce Taxes for which the other Party is responsible hereunder.

5.5 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any settlement statement, invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within 12 months of the date the invoice, or adjustment to an invoice, was rendered. In the event a settlement

statement, an invoice or a portion thereof, or any other claim or adjustment arising hereunder, is disputed, the objecting Party will give notice of the objection to the other Party. Any settlement statement dispute, invoice dispute or invoice adjustment will be in writing and will state the basis for the dispute or adjustment. Payment of the disputed portion of any invoice or adjustment to an invoice will not be required until the dispute is resolved and a corrected invoice is sent to the appropriate Party based on the resolution of the dispute. Upon resolution of the dispute, a revised settlement statement and invoice, if applicable, will be issued and paid in accordance with Sections 5.2 and 5.3. Overpayments will be returned upon request, or upon resolution of a dispute if applicable. Any dispute with respect to an invoice and the settlement statement supporting the invoice is waived unless the other Party is notified in accordance with this Section 5.5 within 6 months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within 12 months after the Settlement Period, the right to payment for such performance is waived. Notwithstanding the foregoing, a Party may pay the entire invoice even where a portion of such invoice is subject to dispute without waiving its right to dispute the invoice and request and receive a return or credit for any overpayment.

## **ARTICLE 6**

### **CREDIT AND COLLATERAL REQUIREMENTS**

#### **6.1 Seller's Collateral Requirement.**

(a) Within [5 Business Days] days after the Effective Date, Seller will post or issue, or cause to be posted or issued in favor of Buyer, the Development Security in the amount of \$12,500,000. The Development Security will be returned to Seller in full within 5 Business Days after Commercial Operation; *provided* Commercial Operation has occurred before the Target Commercial Operation Date, as extended pursuant to Section 3.4(a), and Seller has paid damages, if any, owed pursuant to Section 3.4(b). Seller has no obligation to replenish the Development Security after any draw on the Development Security by Buyer.

(b) On or before the Commercial Operation Date and ending upon the first date that both the Term has ended and Seller has satisfied all of its payment obligations to Buyer under this Agreement, Seller will post or issue, or cause to be posted or issued in favor of Buyer, Seller's Credit Support in the amount of \$12,500,000 to secure Seller's obligations under this Agreement. Seller has no obligation to replenish Seller's Credit Support after any draw on Seller's Credit Support by Buyer.

**6.2 Buyer's Collateral Requirement.** The Parties acknowledge and agree that as of the Effective Date Buyer satisfies the Required Credit Rating. If at any time after the Effective Date Buyer fails to meet the Required Credit Rating, Buyer will within 10 Business Days post or issue, or cause to be posted or issued, Buyer's Credit Support in the amount of **\$12,500,000**. Buyer will provide such Buyer's Credit Support during any period that Buyer fails to meet the Required Credit Rating; *provided* that Buyer has no obligation to replenish the Buyer's Credit Support after any draw on Buyer's Credit Support by Seller. The Buyer's Credit Support will be released upon Buyer's notice that it meets the Required Credit Rating, or upon the first date that both the Term has ended and Buyer has satisfied all of its payment obligations to Seller under this Agreement. Upon Seller's request, Buyer

will from time to time deliver to Seller such information as Seller may reasonably request to confirm Buyer's Credit Rating.

6.3 Security Interest. To secure its obligations under this Agreement, each Party posting Credit Support (the "Credit Support Provider") hereby grants to the other Party, as the secured party (the "Credit Support Beneficiary"), a first priority, present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash obtained by Credit Support Beneficiary resulting from a draw on the Credit Support, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of the Credit Support Beneficiary, and Credit Support Provider agrees to take such action as Credit Support Beneficiary reasonably requires in order to protect the Credit Support Beneficiary's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; provided, however, that the Credit Support Beneficiary may exercise its rights as a secured party (including the right of setoff granted pursuant to this sentence) against such cash collateral only upon the terms and conditions of this Agreement. If Credit Support Beneficiary receives cash proceeds from a Letter of Credit pursuant to a drawing made in accordance with this Agreement, then the Credit Support Beneficiary will use commercially reasonable efforts to deposit such proceeds in a depository account with a Qualified Institution under terms and conditions that allow the proceeds to be disbursed to Credit Support Beneficiary and provide for disbursement to Credit Support Provider upon the terms and conditions of this Agreement. **Such cash collateral will constitute Credit Support for all purposes of this Agreement.**

6.4 Drawing of Credit Support. If an Event of Default has occurred and is continuing, Credit Support Beneficiary will be entitled to draw upon Credit Support for any damages arising from (i) such Event of Default or (ii) any prior Event of Default to the extent that damages arising therefrom have not yet been paid in full to the Credit Support Beneficiary. In the case of Credit Support in the form of a Letter of Credit, Credit Support Beneficiary may draw the full amount of such Letter of Credit within 20 Business Days before the expiration of such Letter of Credit if, as of the date of such drawing, Credit Support Beneficiary does not receive replacement Credit Support meeting the requirements of this Agreement. Except as provided in Section 3.6 with respect to Development Security only, the Credit Support contemplated by this Article 6 constitutes security for, but is not a limitation of liability for either Party's obligations and liabilities under this Agreement.

6.5 Release Upon Termination. If, on any security release date set forth in this Agreement, there are outstanding any claims that (i) were validly made prior to such date against Credit Support then being released and (ii) in the case of any Credit Support being released because it is being replaced, are not fully secured by the replacement Credit Support, then, on such scheduled release date, (a) the amount of the applicable Credit Support will be deemed reduced to the amount of such outstanding claims, (b) such release date will be extended until the final resolution and (if applicable) full payment of such outstanding claims and (c) at the election of Credit Support Provider, the scope of such security may be reduced to secure only such outstanding claims. In the event of a reduction in the amount or scope of any Credit Support in accordance with clauses (a) or (c) of the immediately preceding sentence, Credit Support Beneficiary will

promptly execute any documents and take any other actions reasonably requested by the Credit Support Provider or any applicable Credit Support Guarantor to effect or confirm such reduction in amount or scope, including by executing and delivering an amendment to such Credit Support, by exchanging such Credit Support or by other reasonable means.

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

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES**

7.1 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as follows:

(a) Seller is a [●] limited liability company duly formed, validly existing and in good standing under the Laws of its jurisdiction of formation.

(b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action, and consummation of the transactions contemplated in this Agreement, and fulfillment of and compliance by Seller with the provisions of this Agreement will not constitute a breach of or default under (i) any Applicable Law presently in effect, (ii) the documents of formation of Seller, or (iii) any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(c) This Agreement constitutes a legally valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principals of equity.

(d) Seller has obtained or will obtain all regulatory approvals and permits required by any Governmental Authority to perform its obligations under this Agreement.

(e) Seller has not been served with notice of any Claim, no Claim is pending, and, to Seller's knowledge no Claim is threatened against Seller, which seeks an Order restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Agreement. Except as disclosed on Schedule G, neither Seller nor any Affiliate of Seller is involved with any Person in litigation or legal action with respect to the Project.

(f) Seller is not in violation of, or in default under, any Applicable Law or Order, including Environmental Laws, the effect of which, in the aggregate, would

reasonably be expected to hinder, prevent or delay Seller from performing its obligations under this Agreement.

(g) Except as disclosed on Schedule G, neither Seller nor any Affiliate of Seller has entered into any agreement with any Person concerning, with respect to the Project, (i) remediation or mitigation of environmental impacts, (ii) endangered species, (iii) migratory birds (including bald and golden eagles), (iv) wildlife and species of conservation concern (state and federal), (v) environmentally, culturally or historically sensitive property or resources, (vi) a military facility, or (vii) national security. In addition, neither Seller nor any Affiliate of Seller has entered into any agreement where public disclosure of the agreement or the subject matter of the agreement could reasonably be expected to negatively affect the Project's reputation.

**7.2 Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller as follows:

(a) Buyer is a [●] duly formed, validly existing and in good standing under the Laws of its jurisdiction of formation.

(b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action, and consummation of the transactions contemplated in this Agreement, and fulfillment of and compliance by Seller with the provisions of this Agreement will not constitute a breach of or default under (i) any Applicable Law presently in effect, (ii) the documents of formation of Seller, or (iii) any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(c) This Agreement constitutes a legally valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principals of equity.

**7.3 Seller Disclosure Obligations with Respect to Environmental and Safety Matters.** Promptly after becoming aware of any violation of any Environmental Laws arising out of the construction or operation of the Project, or any Environmental and Safety Noncompliance at the Project, and any claims or actions relating to any of the same by any Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such alleged Environmental and Safety Noncompliance or alleged presence of Hazardous Materials, Seller will promptly (A) disclose such information to Buyer, and (B) take action to correct such violation or Environmental and Safety Noncompliance in accordance with applicable Environmental Laws or directive of Governmental Authority.

## **ARTICLE 8 FORCE MAJEURE**

**8.1 Definition of "Force Majeure Event".** A "Force Majeure Event" is an event or circumstance that (a) prevents a Party from performing its obligations under this Agreement and is not within the reasonable control of, or the result of the negligence of, such Party (or its



Affiliates), and (b) such Party is unable to overcome or avoid by the exercise of due care applying Prudent Industry Practice. Provided the criteria in the first sentence are met, Force Majeure Events will include riot, insurrection, war (declared or not), explosion, fire, flood, earthquake, storm, lightning, tsunami, backwater caused by vandalism, act of the public enemy, terrorism, epidemic, civil disturbances, strike, blockades, sabotage, national, regional or local emergency, and subject to Section 8.1(v), any action or inaction by any Governmental Authority (including NE-ISO or a Transmission Service Provider). Under no circumstances will the following constitute an event of Force Majeure: (i) a Party's ability to enter into a contract for sale or purchase of any Project energy or Environmental Attributes at a more favorable price or under more favorable conditions or other economic reasons, (ii) delays, equipment or other defects or nonperformance by suppliers, vendors or other third parties with whom a Party has contracted, except to the extent that such delays or nonperformance were due to circumstances that would themselves constitute a "Force Majeure Event" as defined above, (iii) Project outages to the extent such are not caused or exacerbated by an event of Force Majeure, (iv) any other economic hardship or changes in market conditions affecting the economics of either Party, (v) delays in issuance of a permit by a Governmental Authority prior to the Commercial Operation Date; or (vi) an action by NE-ISO or the transmission service provider prior to the Commercial Operation Date with respect to the interconnection of the Project or upgrades to transmission facilities that delay the Commercial Operation Date of the Project.

8.2 Excuse of Performance; Required Notice. If a Party (the "Claiming Party") is prevented by a Force Majeure Event from performing, in whole or part, its obligations under the Agreement and, as set forth below, the Party gives notice of the Force Majeure Event to the other Party, then each Party will be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance before the Force Majeure Event). The Claiming Party will give notice to the non-Claiming Party setting forth the nature of the Force Majeure Event in reasonable detail sufficient to establish that the occurrence constitutes a Force Majeure Event as soon as possible after it has knowledge of the Force Majeure Event, and will remedy the Force Majeure Event with all reasonable dispatch. When the Claiming Party is able to resume performance of its obligations under this Agreement, such Party will give the non-Claiming Party written notice and the Parties will resume performance under the Agreement. Subject to Section 8.3, the Term will be extended on a day-for-day basis for the duration of any Force Majeure Event.

8.3 Termination for Extended Force Majeure. Without limiting the provisions of Section 3.7, if a Force Majeure Event continues for a period in excess of 12 consecutive months, then either Party will have the right to terminate this Agreement by providing the other Party with not less than 10 Business Days' prior written notice. Upon the effective date of such termination, neither Party will have any further rights or obligations under this Agreement, except for those rights and obligations arising before the effective date of such termination and as provided in Article 9. Further, neither Party will be liable to the other Party for damages or otherwise owe to the other Party a termination payment of any kind.

8.4 No Relief from Liability for Prior Breach. This Article 8 will not relieve either Party of any liability for breach of any obligations that were to be performed or that accrued before the Force Majeure Event.



## ARTICLE 9 EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default. The occurrence at any time with respect to a Party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such Party (the “Defaulting Party”):

(a) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within 10 Business Days after written notice;

(b) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated and such false or misleading representation or warranty materially impacts such Party’s ability to fulfill its commitments under this Agreement;

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

(d) Such Party becomes Bankrupt;

(e) A Party’s willful misconduct that materially impacts such Party’s ability to fulfill its commitments under this Agreement, or actual fraud in connection with this Agreement;

(f) A Party assigns this Agreement or any of its rights in the Agreement, except as may be permitted under Section 14.6;

(g) The occurrence of a Letter of Credit Default with respect to any Letter of Credit issued in support of any obligations of such Party under this Agreement or any issuer of any such Letter of Credit;

(h) Seller fails to post and maintain the Development Security in accordance with Section 6.2(a), and the failure is not cured within five (5) Business Days after written notice from Buyer;

(i) Seller fails to post and maintain Seller’s Credit Support in accordance with Section 6.2(b), and the failure is not cured within five (5) Business Days after written notice from Buyer;

(j) Buyer fails to post the Buyer’s Credit Support in accordance with Section 0, and the failure is not cured within five (5) Business Days after written notice from Seller; and

(k) Seller does not cause the Project to achieve an Actual Availability Percentage equal to or greater than 70% in each of 3 consecutive Contract Years.

9.2 Remedies for an Event of Default.

(a) Subject to Section 14.4, upon the occurrence and notice to the Defaulting Party, the other Party will have the right (but not the obligation) to:

(i) suspend performance of its obligations under this Agreement; or

(ii) subject to the provisions in Section 6.4, call on and draw down upon the Credit Support provided by the Defaulting Party, if any, to satisfy any and all payments due and amounts otherwise owing under this Agreement; or

(iii) receive from the Defaulting Party direct damages incurred by the Non-Defaulting Party in connection with such Event of Default (including during any applicable cure period, whether or not the Non-Defaulting Party has elected to suspend performance during such cure period). Subject to Section 14.4, the Parties agree that the damages recoverable under this Agreement on account of an Event of Default include Buyer's Cost to Cover and Seller's Cost to Cover, as applicable, during the applicable cure period.

(b) If Buyer is the Defaulting Party, Seller may sell to a third Person, free and clear of any claims by Buyer, all Environmental Attributes for such period during which Seller suspends performance under this Section 9.2.

(c) If Seller is the Defaulting Party, and the applicable Event of Default arises out of Seller selling Environmental Attributes to a third party in violation of this Agreement, Seller agrees that in addition to other remedies available to Buyer, Seller will pay Buyer an amount equal to the proceeds of any such third-party sales.

9.3 Termination for an Event of Default. If an Event of Default has occurred and is not cured within the applicable cure period, if any, set forth in Section 9.1, the Non-Defaulting Party will have the right, at any time when such Event of Default is continuing, and in addition to the remedies set forth in Section 9.2, to:

(a) designate by notice to the Defaulting Party a day, no earlier than the day such notice becomes effective and no later than 20 days after the day such notice becomes effective, on which this Agreement will terminate (the "Early Termination Date");

(b) recover in connection with such termination a Termination Payment, and

(c) subject to the express limitations on remedies set forth in this Agreement in Section 14.4, pursue any other right or remedy available under this Agreement or Applicable Law.

9.4 Draw or Demand on Security. Without limiting either Party's liability hereunder, any amounts owed by either Party to the other under this Agreement (other than disputed amounts) and not satisfied within 30 days of the date on which a Party gives written notice under Section 9.1(a) to the owing Party may be satisfied by drawing or demanding payment under the relevant Credit Support until the amount of such Credit Support has been exhausted.

9.5 Termination Payment. On or as soon as reasonably practicable following the occurrence of an Early Termination Date, the Non-Defaulting Party will calculate the Termination Payment, which will include the Forward Settlement Amount. The “Forward Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be Zero dollars (\$0).

9.6 Notice of Termination Payment. As soon as possible after the designation of an Early Termination Date, the Non-Defaulting Party will notify the Defaulting Party of the amount of the Termination Payment, if any, payable by the Defaulting Party to the Non-Defaulting Party. The notice will include a written statement setting forth in reasonable detail the calculation of such amount, together with reasonable supporting documentation. If the statement shows a Termination Payment due by the Defaulting Party, the Defaulting Party will pay the Termination Payment to the Non-Defaulting Party within 30 days after receipt of notice. To dispute the amount of the Termination Payment, the Defaulting Party must post Credit Support in the full amount of the Termination Payment if it has not already done so. The Credit Support will remain in effect until the dispute is resolved and the Non-Defaulting Party has received full payment. The Parties’ obligations under this Agreement will remain in effect after termination of this Agreement for purposes of complying with all of the provisions of this Section 9.6.

9.7 Other Remedies. The Termination Payment as determined above will be the Parties’ sole and exclusive remedy under this Agreement for termination for an Event of Default. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting a Defaulting Party, the Non-Defaulting Party may exercise any of the rights and remedies with respect to any Credit Support, including any ancillary rights and remedies under applicable Law then in effect. The Non-Defaulting Party will apply the proceeds of the Credit Support realized upon the exercise of any such rights or remedies to reduce the Defaulting Party’s obligations under this Agreement, subject to the Non-Defaulting Party’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

9.8 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages, and 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 of this Agreement, *provided* that in no event will such mitigation obligations include any requirement that either Party pay any amounts to the other Party. The Parties will exercise commercially reasonable efforts when purchasing or selling, as the case may be, electrical energy or environmental attributes to mitigate damages.

9.9 Remedies Cumulative. Subject to the express limitations set forth in Section 14.4 and Section 9.7, each right or remedy of the Parties provided for in this Agreement will be cumulative of and will be in addition to every other right or remedy provided for in this Agreement. A Party’s exercise of any one or more of the rights or remedies provided for in this Agreement will not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Agreement.

9.10 Effect of Termination of Agreement. The provisions of this Agreement will remain in effect only to the extent necessary (i) to provide for final billings and adjustments related to the period before termination with respect to Interval Quantity and Environmental Attributes delivered to Buyer before the date on which termination of this Agreement is effective; and (ii) payment of any money due and owing any Party pursuant to this Agreement. However, termination will not affect or excuse the performance of any Party under any provision of this Agreement that survives termination.

9.11 Cure Rights of Project Lenders. Buyer will provide notice of the occurrence of any Event of Default described in Section 9.1 to any Project Lender.

## **ARTICLE 10**

### **DODD-FRANK ACT SWAP REPORTING REQUIREMENTS**

10.1 Definitions. For purposes of this Article 10: *[NOTE: Under review by K-C]*

(a) “CEA” means the U.S. Commodity Exchange Act, as amended, 7 U.S.C. Section 1, et. seq.

(b) “CFTC” means the U.S. Commodity Futures Trading Commission.

(c) “CFTC Regulations” means the rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations published or issued by the CFTC, in each applicable case as amended, and when used herein may also include specific citations to Titles, Parts or Sections of Title 17 of the Code of Federal Regulations without otherwise limiting the applicability of other rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations.

(d) “LEI/CICI” means a “legal entity identifier” satisfying the requirements of CFTC Regulation 45.6 or such other entity identifier as will be provided by the CFTC pending the availability of such legal entity identifiers.”

(e) “SDR” means a “swap data repository” as defined in Section 1a(48) of the CEA and the CFTC Regulations.”

(f) “Swap” means a “swap” as defined in the Section 1a(47) of the CEA and CFTC Regulations.

(g) “Swap Transaction” means the execution of a new Swap between the Parties or any material amendment, mutual unwind or novation of an existing Swap between the Parties under this Agreement (including, without limitation, any “life cycle event” (as that term is defined in CFTC Regulation 45.1) relating to a Swap).

10.2 Party Representations. Each Party represents and warrants to the other, on and as of the Effective Date and at all times until the termination of this Agreement, that:

(a) It is, and any guarantor, credit support provider or pledgor of assets in support its obligations under this Agreement are each, an “eligible contract participant” as defined in Section 1a(18) of the CEA;

(b) It is not a “swap dealer” as defined in Section 1a(49) of the CEA and CFTC Regulation 1.3(ggg);

(c) It is not a “major swap participant” as defined in Section 1a(33) of the CEA and CFTC Regulation 1.3(hhh);

(d) It is not a “special entity” as defined in Section 4s(h)(2)(C) of the CEA; and

(e) It is a “U.S. Person” as defined in the CFTC’s guidance published at 78 Fed. Reg. 45292.

### 10.3 Reporting Requirements.

(a) In accordance with CFTC Regulation 45.8, Seller and Buyer agree that Seller shall be the “reporting counterparty” (as that term is defined in CFTC Regulation 45.1) with respect to all Swaps under this Agreement. Seller will provide and report to a registered SDR all of the information and data required to be reported under the CFTC Regulations with respect to the Swap and Swap Transaction under this Agreement at its sole cost and expense.

(b) With respect to Swap Transactions involving an “international swap” (as that term is defined in CFTC Regulation 45.1), each Party will notify the other as soon as practicable and in accordance with the notice procedures set forth in this Agreement, of the (i) identity of each non-U.S. trade repository not registered with the CFTC to which the Party or its agent has reported the Swap, and (ii) swap identifier used by such non-U.S. trade repository to identify the Swap.

(c) Buyer will promptly notify Seller of the occurrence of a “life cycle event” (as defined in CFTC Regulation 45.1) that is related to a corporate event (the meaning of “corporate event” as used in CFTC Regulation 45.1 to be reasonably determined by such party unless and until the CFTC issues a specific definition of such term) in respect of Buyer, no later than noon CPT on the applicable “business day” (as that term is defined in CFTC Regulation 45.1) with sufficient detail regarding such life cycle event to allow the Seller to comply with CFTC Regulation 45.4(c) provided, however that nothing herein requires Buyer to provide material non-public information respecting its securities to Seller.

(d) Each Party will provide to the other Party any information reasonably requested by the other Party to enable such other Party to comply with CFTC Regulations in connection with any Swap under this Agreement, including but not limited to, such Party’s LEI/CICI number. Seller will provide to an SDR, or if no SDR is available to receive the information, to the CFTC, the information that is required to be provided under CFTC Regulation 50.50(b) regarding the election (if any) of the exception to the clearing requirement under Section 2(h)(7)(A) of the CEA. If the Buyer elects the exception to the

clearing requirement under Section 2(h)(7)(A) of the CEA, the Buyer will make an annual filing with an SDR, or, if no SDR is available to receive the information, to the CFTC containing all information required to be reported under CFTC Regulation 50.50(b)(1)(iii), as permitted by CFTC Regulation 50.50(b)(2). The Buyer will provide the Seller with a copy of its annual filing described in CFTC Regulation 50.50(b)(2).

(e) Each Party shall provide to the other a complete and accurate “know your counterparty” questionnaire on the Effective Date and thereafter as required by the CEA and as reasonably required by the internal credit and risk management policies of each Party.

## **ARTICLE 11 CHANGES IN MARKET DESIGN**

11.1 Change in Market for Products. If a change in Applicable Law occurs after the Effective Date that renders the performance of this Agreement (in whole or in part) illegal or unenforceable, then either Party, on written notice by the affected Party, may request the other Party to enter into negotiations to make changes to this Agreement as necessary or appropriate to allow such Products to be accounted for by this Agreement, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date. Upon receipt of such notice requesting negotiations, the Parties will promptly (but in any event no later than 15 days after such request) meet and negotiate in good faith such changes. Notwithstanding the foregoing, the Parties agree that the Fixed Price will not be affected by any change in Applicable Laws that alters either Buyer’s or Seller’s costs in connection with this Agreement, operation of the Project or value of the Products delivered or transferred under this Agreement, or affects in any other material way the purpose or economics of this Agreement. For avoidance of doubt, the availability of Additional Products is not considered a change in Applicable Law under this Article 11, and the costs or transfer of Additional Products will be pursuant to Section 4.3.

11.2 Compliance Costs. If a change in Applicable Law occurs after the Effective Date that requires physical changes or changes in the method of operation to the Project in order for the Project to continue to receive Environmental Attributes (including Renewable Energy Credits) associated with the Interval Quantity as of the Effective Date, Seller will make such changes up to the Compliance Cost Cap. Amounts in excess of the Compliance Cost Cap may, at Buyer’s election, be paid by Buyer or Buyer may elect to forego requiring the Project to qualify for the relevant Environmental Attributes.

## **ARTICLE 12 INDEMNIFICATION; REQUIRED INSURANCE**

12.1 Indemnification. Seller (the “Indemnifying Party”) will, at its sole expense and at Buyer’s request, defend, hold harmless and indemnify Buyer and its Affiliates, directors, officers, employees and agents (each, an “Indemnified Party” and collectively, the “Indemnified Parties”) from all third party claims, demands, and legal proceedings and all resulting liabilities judgments, settlements, expenses and costs (including reasonable attorney’s fees incurred and/or those



necessary to successfully establish the right to indemnification) (“Claim(s)”), that, if true, would establish: (a) personal injury (including without limitation, death) or property damage; (b) that Seller or any services or deliverables infringes, misappropriates or otherwise violates any third party’s intellectual property rights; (c) that Seller has breached this Agreement, including but not limited to any of its representations and warranties in this Agreement; (d) Seller’s (including its suppliers and subcontractors) failure to comply with any Applicable Law; (e) Seller’s breach of Article 13; or (f) a Claim that is brought by or for a Seller’s subcontractor, supplier, employee or agent in connection with this Agreement. Seller waives any immunity, defense or protection under any workers’ compensation, industrial insurance or similar Laws in connection with any such Claim. This Section 12.1 is not a waiver of Seller’s right to assert any such immunity, defense or protection directly against any of its own employees or their estates or representatives.

12.2 Notice of Claims; Procedure. Buyer will give Seller reasonable notice of each Claim for which it wants indemnity under Section 12.1. Buyer will also give Seller its reasonable cooperation in the defense of each Claim, at Seller’s expense. Seller will use counsel reasonably satisfactory to Buyer to defend each Claim. Each Indemnified Party may participate in the defense of a Claim at its own expense. If at any time Buyer reasonably determines that any Claim might adversely affect any Indemnified Party, then without limiting Seller’s indemnification obligations, Buyer may take control of the defense of such Claim, and in such event Buyer and its counsel will proceed diligently and in good faith with that defense. Seller may settle any Claim with Buyer’s prior written consent, which consent may not be unreasonably withheld. Seller will not settle any Claim without the Indemnified Parties’ prior written consent, which may not be unreasonably withheld. Seller will see that any settlement it makes of any Claim is made confidential, except where prohibited by Applicable Law. Seller’s duty to defend is independent of its duty to indemnify.

12.3 Insurance Proceeds. If the Indemnifying Party is obligated to indemnify the Indemnified Party under this Article 12 the amount owing to the Indemnified Party is the amount of the Indemnified Party’s Loss net of any insurance proceeds received from coverage provided hereunder by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds plus any increase in Indemnified Party’s insurance premiums.

12.4 Insurance Requirements. During the Term and for at least 2 years afterwards, Seller will acquire and maintain, and will require that its engineering, procurement and construction contractor acquire and maintain, each at its sole cost and expense, such types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event, in the aggregate between Seller and its engineering, procurement and construction contractor, less than the types and amounts described in Schedule E (except that only Seller will be required to acquire and maintain property insurance for the Project) and this Section 12.4. The insurance policies for the coverage set forth in Schedule E must: (a) be issued by companies with a rating of A-/VII or better in the current Best’s Insurance Reports published by A. M. Best Company, Inc.; (b) not be able to be cancelled or have coverage reduced without at least thirty (30) days’ notice from Seller to Buyer; (c) for Commercial General Liability only, name Buyer and its Affiliates, and their respective officers, directors, employees, successors, assigns, licensees, distributors, contractors and agents, as additional insureds; (d) provide coverage on an occurrence basis; (e) waive any insurer right of subrogation against Buyer and its Affiliates and their respective officers, directors, employees, agents, and contractors; and (f) provide primary coverage, without any right of



contribution from any other insurance that Buyer may have. Seller will send Buyer certificates of insurance for the coverages set forth in Schedule E by the Effective Date and at each later policy renewal, via email to: [●]. Nothing in this Section 12.4 or Buyer's actions under it modifies any of Seller's obligations under this Agreement.

## **ARTICLE 13 CONFIDENTIALITY**

13.1 Confidential Information. The term "Confidential Information" as used in this Agreement means:

(a) the specific terms of this Agreement (including the pricing terms thereof) and other information provided by or on behalf of one Party (the "Disclosing Party") to the other Party (the "Receiving Party") or its Representatives in connection with this Agreement, in each case, whether transmitted or disclosed to the Receiving Party or its Representatives in person, electronically, by telephone or facsimile transmission, in writing or by drawings, orally, through discussions between Representatives of the Parties concerning this Agreement or in connection with this Agreement, or in any other manner or form (provided that any writing, drawing or other tangible form is clearly labeled or designated by the Disclosing Party as "confidential" or "proprietary" or with words of like meaning, or if first presented orally or visually, shall be reduced to writing, the writing marked "confidential" by the Disclosing Party and delivered to the Receiving Party within 20 days of the oral or visual disclosure);

(b) any notes, analysis, compilations, studies, interpretations, memoranda, or other documents and writings prepared by the Receiving Party or its Representatives that contain, reflect, or are based upon, in whole or in part, any information described in Section 13.1(a);

*provided, however,* that Confidential Information will not include information that the Receiving Party can document is:

(i) information that is lawfully obtained by the Receiving Party from a third party subsequent to its receipt from the Disclosing Party, if the third party is free from any obligation of confidentiality with respect to such information;

(ii) information that (A) at the time of disclosure by the Disclosing Party to the Receiving Party, is available to the public, or (B) after disclosure by the Disclosing Party to the Receiving Party, becomes available to the public, except where such availability arises out of the breach of this Agreement by the Receiving Party or its Representatives; and

(iii) information independently developed by the Receiving Party without violating its obligations under this Agreement or use of any Confidential Information.

13.2 Disclosure and Use of Confidential Information. The Receiving Party:

(a) will hold in strict confidence all Confidential Information and, without the prior written consent of the Disclosing Party, will not disclose any Confidential Information to any Person (other than the Receiving Party's Representatives), using at a minimum the same degree of care to avoid disclosure of such Confidential Information as the Receiving Party uses with respect to its own confidential information, but in any event not less than a reasonable degree of care;

(b) will use the Confidential Information solely in connection with this Agreement; and

(c) will not disclose any Confidential Information to the Receiving Party's Representatives unless such individuals have a need to know such Confidential Information for a purpose specifically allowed under this Agreement, have been informed of this Agreement and the terms hereof, and have agreed to be bound by such terms or are required by law to maintain the confidentiality of Confidential Information, provided that the Receiving Party will be liable for any breach of the confidentiality provisions of this Agreement by its Affiliates or Representatives.

13.3 Required Disclosure; Disclosure to Auditors and Industry Price Sources. The confidentiality requirements of this Agreement will not apply to Confidential Information to the extent that the Receiving Party is required to disclose such Confidential Information pursuant to Applicable law or legal process compelling disclosure. If the Receiving Party or its Representatives are compelled by any such law or legal process to disclose any Confidential Information, the Receiving Party, to the extent not prohibited by Applicable law, will provide the Disclosing Party with prompt notice of such requirement, will use commercially reasonable efforts to resist such compelled disclosure, and will cooperate with the Disclosing Party in obtaining appropriate protective order(s) for such compelled disclosure (in each case at the Disclosing Party's expense). If the Receiving Party or its Representatives are compelled to disclose Confidential Information as contemplated under this Agreement or the Disclosing Party waives compliance with the provisions of this Agreement pursuant to this Agreement, then the Receiving Party or its Representatives may so disclose such Confidential Information or other information without liability hereunder, provided that (x) to the extent not prohibited by Applicable law, the Receiving Party has given the Disclosing Party a reasonable opportunity under the circumstances to review the text of such disclosure before it is made and (y) the Receiving Party uses commercially reasonable efforts to obtain from the Person to whom disclosure is made written assurance that confidential treatment will be accorded to such portion of the Confidential Information that is disclosed (at the Disclosing Party's expense). In addition, a Party may disclose this Agreement as part of an audit of its financial statements. A Party may also disclose one or more commercial terms of this Agreement (in a manner such that no party, the Project, or the Agreement is identifiable) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

13.4 Specific Performance; Attorney's Fees. The Receiving Party acknowledges and agrees that, because of the sensitive and confidential nature of the Confidential Information, the breach by the Receiving Party of the terms of this Agreement with regard to disclosure of Confidential Information may cause the Disclosing Party irreparable harm and damage that may not be susceptible to accurate quantification. Therefore, the Receiving Party agrees that, in the

event of such breach, the Disclosing Party will have the right to exercise all remedies available at law and equity, including, specific performance and injunctive relief (without the posting of any bond and without proof of actual damages), and the Receiving Party hereby submits to the subject matter jurisdiction of a court granting such relief.

13.5 Survival of Obligations. The confidentiality obligations of the Receiving Party under this Agreement shall survive the termination of this Agreement.

13.6 Public Announcements. Neither Party may, without the prior written consent of the other Party, (a) use any names, trademarks or logos of the other Party or its Affiliates, or (b) originate any publicity, issue or make any public announcement, press release or statement, written or oral, regarding this Agreement. However, no Party will be prohibited from issuing or making any such public announcement, press release or statement, without obtaining approval from the other Party, if it is necessary to do so to comply with Applicable Laws, legal proceedings or rules and regulations of any stock exchange having jurisdiction over such Party or if it is necessary to do so in connection with such Party or its Affiliates' financial statements.

## **ARTICLE 14 MISCELLANEOUS**

### 14.1 Notices.

(a) Effectiveness. Any notice or other communication in respect of this Agreement may be given in any manner set forth below to the address or number or in accordance with the electronic messaging system details provided in Schedule D and will be deemed effective as follows:

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iii) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(iv) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the first following day that is a Business Day.

(b) Change of Notice Information. Either Party may by notice to the other change (i) the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it, (ii) the names or titles of designated notice recipients or the Authorized Representative, and (iii) other matters pertinent to the receiving Party's receipt and processing of notices.

14.2 Audit Rights. Subject to Article 14, Seller agrees that Buyer or Buyer's Authorized Representative, and any governmental agency that regulates Buyer may, at all reasonable times during the Term and for 3 years thereafter and upon reasonable notice, inspect and audit the books and records of Seller for the sole purpose of evaluating Seller's compliance with this Agreement and any Applicable Law applicable to Buyer. Buyer will retain all applicable books and records for 3 years subsequent to the expiration or termination of this Agreement or such longer period as required by Applicable Law. Seller will respond within 1 Business Day of receipt of Buyer's request with information and documentation required in relation to an inspection by a Governmental Authority. Buyer will have the right to inspect the Meters annually and will have the right to have a representative present at each Meter test and recalibration conducted by Seller or NE-ISO.

Governing Law; Waiver of Jury Trial; Dispute Resolution. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER WILL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATED TO THIS AGREEMENT. EACH PARTY CONSENTS TO SERVICE OF PROCESS BY CERTIFIED MAIL AT ITS ADDRESS EFFECTIVE PURSUANT TO ARTICLE 14.

(b) EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT.

14.4 Dispute Resolution.

(a) If any dispute arises with respect to a Party's performance under this Agreement, the Authorized Representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within 5 Business Days after the written request of either Authorized Representative. If the Authorized Representatives are unable to resolve such dispute, senior officers or executives of each Party shall meet, either in person or by telephone, within 10 Business Days of the earlier of (i) written notice by either Party that the Authorized Representatives have been unable to resolve such dispute, or (ii) 30 days after the Authorized Representatives' initial meeting. If the dispute is not resolved within 30 days after referral of the dispute to senior executives, or no meeting of senior executives has taken place within 15 days after such referral, either Party may initiate any legal remedies available to the Party. All negotiations pursuant to this clause are confidential.

(b) If the dispute is not resolved within 30 days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within 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 Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on the date a Party requests mediation.] ***[NOTE: More specific mediation provisions to be discussed.]***

#### 14.5 LIMITATION OF LIABILITY.

(a) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE, EXEMPLARY, MULTIPLIED, INDIRECT OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR REVENUES OR ANY CLAIM FOR ATTORNEY FEES, COSTS AND PREJUDGMENT INTEREST.

(b) TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. THE PARTIES AGREE TO WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

#### 14.6 Transfers and Assignment.

(a) General. Except as provided in this Section 14.6, neither Party may assign this Agreement, without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, a Party may make the following assignments without the prior written consent of the other Party, but shall provide written notice of such permissible assignments as soon as practical:

(i) Either Party may transfer or assign all, but not less than all, of its rights and obligations under this Agreement to an Affiliate, so long as (i) such Affiliate's ability to perform the relevant obligations of this Agreement, directly or through contractors, is equal to or greater than that of such Party at the time of assignment, (ii) such Affiliate's Credit Rating is equal to or greater than the Credit Rating of the assigning Party, and (iii) such Affiliate either maintains or replaces any Credit Support provided by the assigning Party;

(ii) Seller may, without relieving itself from liability hereunder, transfer, pledge, encumber or assign this Agreement or the account, revenues or proceeds thereof, or any part of its ownership interest in the Project, as collateral to a Project Lender in connection with debt or tax equity financing or refinancing of

the Project; *provided* that (x) Seller's equity in the Project does not fall below 50% (disregarding tax equity investors), (y) there is no change in the Person responsible for day-to-day operations at the Project, and (z) Seller continues to maintain Seller's Credit Support. Buyer will provide such consents to collateral assignment or other documents (including estoppel certificates related to a tax equity financing) as may be reasonably requested by Seller in connection with the financing or refinancing of the Project, provided, however, that (i) Seller will reimburse Buyer for any and all costs or expenses incurred by Buyer in connection therewith (including legal fees and expenses), and (ii) no legal opinions will be required from or on behalf of Buyer. The consent to collateral assignment may provide that the Project Lender is entitled to receive notice of, and have an opportunity to cure, any default by Seller; provided that the cure period available to Project Lender will not exceed the cure period available to Seller by more than 60 days.

(b) Assumption by Assignee; No Release from Liabilities. In no event shall the assigning Party be released from its liabilities and obligations under this Agreement without the consent of the other Party, in such other Party's reasonable discretion; provided, however, if either Party assigns this Agreement as permitted by this Section 14.6, such assigning Party shall, to the extent the assignee assumes the liabilities and obligations of such assigning Party under this Agreement, be released from such liabilities and obligations; provided further that such release shall not apply, and the assigning Party shall not be released from its liabilities and obligations relating to, the period prior to the date of assignment with respect to any Event of Default that has occurred and is continuing at the time of such assignment if such Event of Default is not cured by the assignee in accordance with this Agreement.

14.7 Waiver. No delay or omission by the Parties in exercising any right or remedy provided for herein will constitute a waiver of such right or remedy nor will it be construed as a bar to or waiver of any such right or remedy on any future occasion. Notwithstanding the foregoing, each Party, in its sole discretion, will have the right, but will have no obligation, to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; *provided, however*, that neither Party will be deemed to have waived, deferred or reduced any such requirements unless such waiver, deferral or reduction is in writing and signed by the Party taking such action. A Party's exercise of any rights under this Agreement will apply only to such requirements and on such occasions as such Party may specify and will in no event relieve the other Party of any requirements or other obligations not so specified.

14.8 Bankruptcy Code Matters. The Parties acknowledge and intend that this Agreement, the transactions contemplated in this Agreement, and any instruments that may be provided by either Party under this Agreement will each, and together, constitute one and the same "swap agreement," "forward contract," "forward agreement" and "master netting agreement" within the meaning of the Bankruptcy Code, and that Buyer and Seller are "swap participants" and "forward contract merchants" within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, or otherwise take any position to the effect that this Agreement, the transactions contemplated under this Agreement, and any instrument(s) that may be provided by either Party under this Agreement do not each, and together, constitute one and the same "swap agreement," "forward contract," "forward agreement" and "master netting



agreement” within the meaning of the Bankruptcy Code, or that Buyer and Seller are not “swap participants” and “forward contract merchants” within the meaning of the Bankruptcy Code.

14.9 Consent to Telephone Recording. Each Party to this Agreement acknowledges and agrees to the taping or electronic recording (“Recording”) of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties. Each Party waives any further notice of such monitoring or Recording, and agrees to notify its Representatives of such monitoring or Recording and to obtain any required consent of such Representatives. Each Party further agrees that any such Recording will be retained in confidence and secured from improper access, and that such Party will not contest or assert any defense (except a defense that the tapes or other Recording device has been actively tampered with) to the validity or enforceability of such telephonic communications (or to the submission of any such Recording in evidence in any proceeding or action relating to this Agreement), on the basis of (a) the failure of any such communication to comply with the requirements of any Law that agreements be in writing or signed by the Party to be thereby bound or (b) the lack of authority of any Representative of such Party to make such communication. Any such Recording, and the terms and conditions described therein, if admissible, will be the controlling evidence for the Parties’ agreement with respect to the subject matter thereof; provided, however, that in the event of any conflict between the terms of this Agreement and the terms of any Recording, the terms of this Agreement will prevail.

14.10 Amendments. This Agreement may be modified or amended only by an instrument in writing signed by the Parties.

14.11 Entire Agreement. This Agreement contain the entire understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous discussions, agreements and commitments between the Parties with respect hereto and thereto, and any prior and contemporaneous confidentiality agreements executed by the Parties in respect of the transactions contemplated by this Agreement. There are no agreements or understandings between the Parties respecting the subject matter hereof or thereof, whether oral or written, other than those set forth herein or therein, and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

14.12 Status of the Parties.

(a) Seller is an independent contractor and nothing contained herein will be construed as constituting any relationship with Buyer other than that of purchaser and independent contractor, nor will it be construed as creating any relationship whatsoever between the Parties, including employer/employee, partners or joint venture parties.

(b) Each Party is acting for its own account, and it has made its own independent decisions to enter into the Agreement and as to whether the Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Party as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement will not be considered investment advice or a



recommendation to enter into this Agreement. No communication (written or oral) received from the other Party will be deemed to be an assurance or guarantee as to the expected results of this Agreement except as otherwise expressly set forth herein.

(c) Each Party is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Agreement. It is also capable of assuming, and assumes, the risks of the Agreement.

(d) Neither Party is acting as a fiduciary for or an adviser to the other Party in respect of the Agreement.

(e) Each Party is entering into this Agreement and any other documentation relating to this Agreement as principal (and not as agent or in any other capacity, fiduciary to otherwise).

14.13 Expenses. Each Party will be responsible for its own costs and expenses (including the fees and expenses of its legal counsel) incurred in the preparation, review, execution and delivery of the Agreement, any Credit Support, and all related documents.

14.14 Survival. All provisions of this Agreement that either expressly by their terms survive or, by their nature are to survive or come into or continue in force and effect after the termination of this Agreement will remain in effect and be enforceable following such termination.

14.15 Further Assurances. Each Party agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

14.16 Headings. The headings to Articles, Sections and Exhibits of this Agreement are for ease of reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein.

14.17 No Rights in Third Parties. Except with respect to the lender accommodations set forth in Section 14.6(a)(ii), this Agreement and all rights in this Agreement are intended for the sole benefit of the Parties and will not imply or create any rights on the part of, or obligations to, any other Person.

14.18 Expenses. A Defaulting Party will, on demand, indemnify and hold harmless the other Party for and against all reasonable out-of-pocket expenses, including legal fees and costs, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support to which the Defaulting Party is a party or by reason of the early termination of this Agreement, including costs of collection.

14.19 Severability. The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Agreement will not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

14.20 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document will not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, or any amendments or Exhibits to this Agreement.

14.21 Remedies Cumulative. Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by Applicable Law.

14.22 Nondedication. Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and this service will cease upon termination of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement effective as of the Effective Date.

Megan Markle Wind Energy LLC

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

Its: \_\_\_\_\_

Pfizer Corporation

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

Its: \_\_\_\_\_

## **SCHEDULE A**

### **DEFINITIONS**

“Acceptable REC Registry” means NE-ISO, or any other registry as mutually agreed to by the Parties.

“Actual Availability Percentage” means a percentage calculated as (a) 100, multiplied by (b) the result of (i) the sum of all Available Hours for all Turbines that were part of the Project at the beginning of the relevant Contract Year, divided by (ii) the sum of all Period Hours in the relevant Contract Year for all Turbines that were part of the Project at the beginning of the Contract Year.

“Available Hours” means the number of hours in which a Turbine was electrically interconnected at the Project. Available Hours include all Excused Hours. Available Hours will also include the time during which a Turbine is deliberately de-energized to optimize output from the Project and the time required to return Turbines to service after termination of any Excused Hours event.

“Additional Products” means, for example, Buyer’s Percentage of Future Environmental Attributes, Capacity, ancillary services, resource adequacy benefits or any other products or services produced by the Project that become recognized and marketable during the Term.

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, will mean (a) the direct or indirect right to cast at least 50% of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least 50% of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Agreement” is defined in the Preamble.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, tariffs, writs and Orders that apply to this Agreement.

“Applicable Market Rules” means the (i) the NE-ISO Nodal Protocols, and Other Binding Documents of NE-ISO, in each case as amended or supplemented from time to time; (ii) any rules, regulations and Orders issued by the NERC or the Texas Reliability Entity, Inc (“TRE”) and applicable to the Project, in each case as amended or supplemented from time to time. For avoidance of doubt, Applicable Market Rules includes (i) all TRE and NE-ISO reliability requirements applicable to generator owners and generator operators, and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the NE-ISO or the Transmission Service Provider.

“Approvals” means all applications, approvals, authorizations, consents, filings, licenses, Orders, permits or similar requirements imposed by any Governmental Authority, the

Transmission Service Provider or the NE-ISO necessary to develop, construct, operate, maintain, the Project or to forecast or deliver the Interval Quantity and the Environmental Attributes as contemplated by this Agreement.

“Authorized Representative” is defined in Section 4.4.

“Bankrupt” means, with respect to a Party or other entity, that such Party or other entity: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditor’s rights, or a petition is presented for its winding-up or liquidation, which proceeding or proceeding is not dismissed, stayed or vacated within 30 days thereafter; (v) commences a voluntary proceeding seeking a Judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Business Day” means any day except a Saturday, Sunday or an approved holiday of the Public Utility Commission of Texas. A Business Day will open at 8:00 a.m. CPT and close at 5:00 p.m. CPT.

“Buyer” is defined in the Preamble.

“Buyer’s Expected Capacity” means 125 MW.

“Buyer’s Credit Support” means Eligible Credit Support posted by Buyer to Seller in accordance with Section 6.2.

“Buyer’s Percentage” means the percentage equal to Buyer’s Expected Capacity (125 MW) divided by the Project Expected Capacity (320 MW), or 41.6%.

“Calculation Interval” means the fifteen-minute interval or other interval utilized by NE-ISO as the basis for settlement calculations in the Real-Time Energy Market.

“Capacity Shortfall Damages” is defined in Section 3.4(d).

“CEA” means the U.S. Commodity and Exchange Act of 1936, as amended.

“CFTC” means the U.S. Commodity Futures Trading Commission or its successor.

“Claim” means any demand, claim, action, suit, investigation, arbitration or proceeding (whether at law or in equity) before or by any Governmental Authority or by any other Person.

“Claiming Party” is defined in Section 8.2.

“Commercial Operation” means that (a) Turbines equal or greater than 270 MW have been constructed, commissioned and tested (in accordance with the Turbine manufacturer’s requirements) and in accordance with Prudent Industry Practices, (b) Seller has submitted to Buyer a certificate of an officer of Seller stating that all permits to construct and operate the Project in compliance with all Applicable Laws and this Agreement have been obtained and are in full force and effect and the Project has been completed in all material respects (except punch list items that do not materially and adversely affect the ability of the Project to operate as intended) and is capable of delivering energy to the Resource Node in accordance with Prudent Industry Practices.

“Commercial Operation Date” means the date on which Seller provides notice to Buyer pursuant to Section 3.4(c).

“Compliance Cost Cap” means \$250,000.

“Confidential Information” is defined in Section 13.1.

“Contract Year” means a period of 12 consecutive months, with the first Contract Year to commence on the Commercial Operation Date and each subsequent Contract Year to commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by that Party in entering into any new arrangement which replaces this Agreement.

“CPT” means Central Prevailing Time, meaning prevailing Standard Time or Daylight Savings Time in the Central Time Zone.

“Credit Rating” means (i) with respect to any entity other than a financial institution, the current (A) rating issued or maintained by S&P or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) or (B) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody’s, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term, unsecured, unsubordinated deposits.

“Credit Support” means the type and amount of Eligible Credit Support posted or to be posted by the Credit Support Provider to the Credit Support Beneficiary.

“Credit Support Beneficiary” is defined in Section 0.

“Credit Support Provider” is defined in Section 0.

“Curtailment” means any curtailment of delivery of the Interval Quantity resulting from a reduction (including curtailment to zero output or non-dispatch) of the net electrical output of the Project from levels of net electrical output the Project would otherwise be capable of producing as directed by NE-ISO.

“Deemed Generated Energy” means the quantity of electric energy, expressed in MWh, that either (i) was produced during the relevant measurement period, or (ii) that Seller reasonably calculates would have been produced by the Project during the relevant measurement period, as determined by taking into account during the relevant measurement period the actual wind speed measurements as recorded by the Project’s wind speed measurement instrumentation, or if such equipment is unavailable during a relevant interval, then using available data or interpolated data determined in accordance with Prudent Industry Practices, and the percentage of the Turbines ready and available to generate energy.

“Defaulting Party” has the meaning set forth in Section 9.1.

“Delay Damages” is defined in Section 3.4(b).

“Delivery Term” means the time period from and including the Commercial Operation Date through the end of the Term.

“Development Security” means Eligible Credit Support posted by Seller to Buyer in accordance with Section 6.1(a).

“Disclosing Party” is defined in Section 13.1(a).

“Early Termination Date” is defined in Section 9.3(a).

“Early Termination Fee” is defined in Section 3.5(a).

“Effective Date” has the meaning given in the Preamble.

“Eligible Contract Participant” is defined in Section 10.2(a).

“Eligible Credit Support” means collateral in the form of (i) Letter of Credit, (ii) cash deposit, (iii) Performance Bond, or (iv) other form of security acceptable to the requesting Party.

“Emergency” means (i) an actual or imminent condition or situation which jeopardizes the integrity of Transmission Service Provider’s electric system or the integrity of any other systems to which the Transmission Service Provider’s electric system is connected, as determined by the Transmission Service Provider in its reasonable discretion, or any condition so defined and declared by the NE-ISO; (ii) an emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the Transmission Service Provider’s electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety; or (iii) a situation where Seller reasonably determines that health or safety are at risk, or damage to equipment may occur.



“Emissions Rate Credits” means a tradable compliance unit as defined in the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (the “Clean Power Plan”).

“Energy” means power produced in the form of electricity, measured in kilowatt hours or in megawatt hours.

“Environmental Attribute Transfer Deadline” means 45 days after the calendar quarter in which such Environmental Attributes were generated.

“Environmental Attributes” means (i) any emissions, air quality, water quality or quantity, or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with Buyer’s Percentage of the Project Energy or Project Capacity and that is related to the Project’s benefits to the environment and capable of being measured, verified or calculated and (ii) the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person, including under any present or future federal, state or local law, regulation or bill or any international or foreign emissions trading program. Environmental Attributes include Renewable Energy Credits, Emissions Rate Credits, carbon credits, portfolio credits, emissions allowances, green tags, tradable renewable credits, Green-e® products credits, environmental air quality credits and emissions reduction credits, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance attributable to the generation of the Energy by a renewable Energy facility, including any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, particulate matter, soot or mercury or implementing the United Nations Framework Convention on Climate Change or the Kyoto Protocol to the United Nations Framework Convention on Climate Change or crediting “early actions” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator. Notwithstanding the foregoing or anything to the contrary, Environmental Attributes include Renewable Energy Credits associated with the Facility but do not include federal, state and local tax credits, grants or other tax incentives or any other incentives.

“Environmental Laws” means all Laws relating to (i) facility siting, land use and environmental matters, (ii) the control of any pollutant, or protection of the air, water, or land, (iii) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation, (iv) exposure to hazardous, toxic or other harmful substances, and (v) the protection and enhancement of the environment. Environmental Laws will include the Clean Air Act, 42 U.S.C. §7401 et seq. (“CAA”), the Clean Water Act, 33 U.S.C. § 1251 et seq. (“CWA”), the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Resource Conservation Recovery Act, 42 U.S.C. §6901 et seq. (“RCRA”), the Safe Drinking Water Act. 42 U.S.C. §300f et seq., the Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act, 32 U.S.C. §9601 et seq. (“CERCLA”), the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.,

the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (“TSCA”), and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq., any state or local Laws relating to Permits, local land use control ordinances or similar Laws, and any state or local Laws implementing or substantially equivalent to the foregoing federal requirements.

“Environmental and Safety Noncompliance” means any violation of Environmental Laws, including: (a) the discharge, emission, release or threatened release (as such term is used in CERCLA, the CWA, the CAA or other similar Environmental Laws) of any Hazardous Materials in violation of any Environmental Laws or permits issued thereunder; (b) any noncompliance with Environmental Laws regarding the construction, modification, operation and maintenance of physical structures, equipment, processes or facilities; (c) any noncompliance with federal, state or local requirements governing occupational safety and health ; (d) any facility operations, procedures, designs, or other matters which do not conform to the statutory or regulatory requirements of Environmental Laws, including the CAA, the CWA, the TSCA and the RCRA; (e) the failure to have obtained or to maintain in full force and effect Permits, variances or other authorizations necessary for the legal operation of any equipment, process, facility or any other activity, to the extent required for compliance with Environmental Laws; or (f) the operation of any facility, process, or equipment in violation of any permit condition, schedule of compliance, administrative or court order, to the extent required for compliance with Environmental Laws.

“NE-ISO” means the Electric Reliability Council of Texas.

“NE-ISO Approved Meter” means the NE-ISO approved polled settlement meter, or meters that is the meter used by NE-ISO for real time metering of Project Energy.

“NE-ISO Nodal Protocols” means the document adopted by NE-ISO, including any referenced attachments or exhibits, as amended from time to time, that contain the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards and criteria of NE-ISO.

“NE-ISO Transmission Grid” is defined in the NE-ISO Nodal Protocols.

“Event of Default” is defined in Section 9.1.

“Excused Hours” means those hours during which Seller is unable to schedule or deliver Energy to the Resource Node as a result of a (i) Curtailment, (ii) Emergency, (iii) Force Majeure event, (iv) Buyer’s failure to perform (other than due to a breach by Seller of its obligations under the Agreement) or (v) other hours during which Seller is unable for any reason (other than due to a breach by Seller of its obligations under the Agreement) to deliver any Energy that the Project is otherwise capable of producing and delivering to the Resource Node.

“Expected Commercial Operation Date” is defined in Section 3.4(d).

“Fixed Price” is defined in Section 5.1.

“Floating Price” is defined in Section 5.1.

“Force Majeure Event” is defined in Section 8.1.

“Forward Settlement Amount” is defined in Section 9.5.

“Future Environmental Attributes” means environmental products or benefits, generated by or attributable to the Project that become recognized and marketable during the Term.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement, and includes the value of Environmental Attributes.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for this purpose in accordance with prudent industry practices.

“Governmental Authority” means any national, state, provincial, local, tribal or municipal government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law including NE-ISO, the TRE and NERC; *provided, however*, that “Governmental Authority” will not in any event include any Party.

“Hazardous Materials” means any chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, which are listed or regulated as hazardous, toxic or dangerous or as waste or a contaminant, or are otherwise listed or regulated, or for which liability or standards of care are imposed, under any Environmental Law, including petroleum products, asbestos, PCBs, coal combustion by-products, urea formaldehyde foam insulation, lead-containing paints or coatings, and any substances included in the definition of “hazardous debris,” “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” “pollutants,” “contaminants” or words of similar import, under any Environmental Laws.

“Indemnified Party” is defined in Section 12.1.

“Indemnifying Parties” is defined in Section 12.1.

“Installed Capacity” means the nameplate capacity of all Turbines installed, interconnected, operating and capable of producing Energy as of the applicable date.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Project will be interconnected with the Transmission Owner.

“Interconnection Facilities” means the equipment and facilities, including any modifications, additions and upgrades made to such facilities that are necessary to connect the Project to the NE-ISO Transmission Grid.

“Internal Revenue Code” means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

“Interval Quantity” means for each Calculation Interval during the Delivery Term, an amount (expressed in MWh) equal to the Buyer’s Percentage of the net electric Energy generation from the Project delivered at the Resource Node during such Calculation Interval, as determined in accordance with Section 4.7 (Metering) and adjusted according to Section 4.8 (Non-Settlement), provided that such amount shall be deemed to equal zero when the Floating Price is less than the Minimum Floating Price.

“Letter of Credit” means an irrevocable, transferable, standby letter of credit, issued by a Qualified Institution, which letter of credit is reasonably acceptable in form and substance to the beneficiary thereof. Costs for Letters of Credit will be borne by the applicant for the Letter of Credit. Any Letter of Credit provided will (i) be for a minimum period of one year; (ii) be renewed or replaced by the applicant not less than 20 days before its expiration; and (iii) provide that the Letter of Credit may be drawn if it is not renewed or replaced. If the Letter of Credit is drawn due to a failure of the applicant to renew or replace the Letter of Credit not less than 20 days before its expiration, the proceeds of any such draw will constitute collateral provided to the beneficiary in the form of cash. If the beneficiary draws on the Letter of Credit as provided in the preceding sentence, the cash will be maintained in a custodial account at a national bank reasonably acceptable to the applicant. The beneficiary may withdraw funds from such account to pay any amount due and owing by the applicant under this Agreement that has not been paid within the time provided under this Agreement.

“Letter of Credit Default” means, with respect to a Letter of Credit or the issuer thereof, the occurrence of any of the following events, unless the Defaulting Party will deliver to the Non-Defaulting Party a replacement Letter of Credit issued by a Qualified Institution in the same face amount and on substantially the same terms as the outstanding Letter of Credit on or before the third Business Day after notice from the Non-Defaulting Party (or the fifth Business Day after such notice if only the following clause (i) applies): (i) such issuer fails to meet the requirements for a Qualified Institution; (ii) such issuer fails to honor the beneficiary Party’s properly documented request to draw on such Letter of Credit or otherwise fails to comply with or perform its obligations under such Letter of Credit; (iii) such issuer disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit; (iv) such Letter of Credit is not renewed at least 20 Business Days before the expiration of such Letter of Credit in accordance with its terms, or such Letter of Credit expires or terminates, or fails or ceases to be in full force and effect, at any time during the Term; or (v) such issuer becomes Bankrupt; provided, however, that no Letter of Credit Default will occur or be continuing with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Locational Marginal Price” is defined in the NE-ISO Nodal Protocols.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement and must include the value of Environmental Attributes and, if Buyer is the Non-Defaulting Party, will include losses related to the loss of additionality and marketing claims.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally suitable for these purposes in accordance with prudent industry practices.

“Make-Whole Payment” is defined in Section 4.8.

“Minimum Floating Price” means,

(i) During Contract Years 1 through 10, the Production Tax Credit Value expressed as a negative number.

(ii) During Contract Years 11 and 12, zero Dollars (\$0).

“Moody’s” means Moody’s Investor Services, Inc. and any successor thereto.

“MW” means megawatts.

“NERC” means a North American Electric Reliability Corporation or its successor.

“Non-Defaulting Party” means, with respect to any Event of Default, the Party that is not the Defaulting Party.

“Non-Settlement Period” is defined in Section 4.8.

“Order” means any order, judgment, writ, injunction, decree, settlement, stipulation or award of any Governmental Authority.

“Outside Commercial Operation Date” is defined in Section 3.7.

“Party” or “Parties” is defined in the Preamble and includes any permitted assignee of a Party.

“Payment Date” is defined in Section 5.3.

“Performance Bond” means a performance bond issued by a U.S. insurance company that maintains a Financial Strength Rating (as defined by A.M. Best) of at least “A+” from A.M. Best Rating Services, Inc. (A.M. Best).

“Period Hours” means 8760 hours for each Turbine in operation in any given Contract Year.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity or organization.

“Planned Outages” means Seller’s planned partial or complete reduction of the generating capability of the Project, as scheduled pursuant to Section 4.10, for non-emergency, routine maintenance purposes.

“Production Tax Credit” means production Tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal Tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Project, is eligible.

“Production Tax Credit Value” is provided in Exhibit [ ].

“Products” means collectively, (i) the Interval Quantity measured at the Resource Node; (ii) Buyer’s Percentage of the Renewable Energy Credits and other Environmental Attributes, and (iii) Additional Products provided pursuant to Section 4.3.

“Project” is defined in the Recitals.

“Project Expected Capacity” is defined in the Recitals.

“Project Lenders” means any and all Persons or successors in interest thereof (A) lending money or extending credit (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; or (B) participating (directly or indirectly) as an equity investor (including but not limited to a tax equity investor) in the Project; or (C) any lessor under a lease finance arrangement relating to the Project.

“Prudent Industry Practices” means those practices, methods and acts that would be implemented and followed by prudent and properly trained operators of electric energy generating facilities similar to the Project, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known or

that should reasonably have been known at the time, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Industry Practices are not intended to be limited to the optimum practices, methods, or acts, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the industry and in all cases excludes negligent acts or omissions.

[“Qualified Institution” means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating from one or both of S&P and Moody’s, which Credit Rating is at least “A-” from S&P (if such bank has a Credit Rating from S&P) and “A3” from Moody’s (if such bank has a Credit Rating from Moody’s), and (ii) having a net worth of at least \$2,500,000,000 at the time of issuance of the Letter of Credit.] [*Under review by K-C Treasury*]

“Qualified Scheduling Entity” is defined in the NE-ISO Nodal Protocols.

“Real-Time Energy Market” is defined in the NE-ISO Nodal Protocols.

“REC Certification Party” means Buyer, or a third-party as designated by Buyer pursuant to Section 4.10(c).

“Receiving Party” is defined in Section 13.1(a).

“Recording” is defined in Section 14.9.

“Renewable Energy Credit(s)” or “RECs” means a tradable instrument that represents all of the renewable attributes associated with one MWh of production from the Project certifiable under the Renewable Energy Standard.

“Renewable Energy Standard” means the Texas Renewable Energy Credit Program and Green-e Energy National Standard Version 2.8.

“Representatives” means, with respect to a Party, (i) the directors, officers, managers, employees, financial advisors, accountants, auditors, legal counsel, consultants and other representatives of such Party or its Affiliates and (ii) such Party’s or its Affiliates’ current or potential lenders, sources of funding and collateral or rating agencies.

“Required Credit Rating” means, in the case of any Person, that such Person’s Credit Rating of (i) if rated by only one of Moody’s or S&P, a Credit Rating of “Baa3” or higher by Moody’s or “BBB-” or higher by S&P, or (ii) if rated by both Moody’s and S&P, a Credit Rating of “Baa3” or higher by Moody’s and “BBB-” or higher by S&P.

“Resource Node” means the interconnection point between the Project and the NE-ISO Transmission Grid, as defined in the Interconnection Agreement.

“S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Seller” is defined in the Preamble.



“Seller’s Credit Support” means Eligible Credit Support posted by Seller to Buyer in accordance with Section 6.1(b).

“Settlement Amount” is defined in Section 5.1.

“Settlement Period” is defined in Section 5.1.

“Settlement Point” means the NE-ISO South Hub.

“Site” means the real property on which the Project is, or will be located, as further described in Annex A.

“Target Commercial Operation Date” is defined in Section 3.4(a).

“Taxes” means all foreign and domestic taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, whether currently in effect or adopted during the Term, including ad valorem, consumption, excise, franchise, gross receipts, import, export, license, property, sales, stamp, storage, transfer, turnover, use or value-added taxes, payroll, unemployment, and any and all items of withholding, deficiency, penalty, addition to tax, interest or assessment related thereto.

“Term” is defined in Section 3.1.

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party arising prior to the Early Termination Date.

“Transmission Owner” means any entity or entities responsible for the interconnection of the Project with the NE-ISO Transmission Grid.

“Turbine” means a single wind turbine generating system, including the tower, pad, transformer and controller system, included as part of the Project.

“Unit Contingent” means that: (i) the Products will be sourced solely from the Project; and (ii) Seller does not represent or covenant that any amount of Interval Quantity or associated Environmental Attributes will be generated or produced in any hour.

**SCHEDULE B**

**MEGAN MARKLE WIND ENERGY LLC**

**PROJECT DESCRIPTION**

[TO BE COMPLETED]

## **SCHEDULE C**

### **GUARANTEED AVAILABILITY**

#### Section 1. Definitions.

Capitalized terms used in this Schedule C and not defined in this Schedule will have the meaning assigned in Schedule A.

“Actual Availability Percentage” means a percentage calculated as (a) 100, multiplied by (b) the result of (i) the sum of all Available Hours for all Turbines that were part of the Project at the beginning of the relevant Contract Year, divided by (ii) the sum of all Period Hours in the relevant Contract Year for all Turbines that were part of the Project at the beginning of the Contract Year.

“Annual Report” is defined in Section 2.3 of this Schedule.

“Availability Damages” is defined in Section 2.2 of this Schedule.

“Availability Shortfall” means for any Contract Year where the Guaranteed Availability is not met, the positive difference between the Guaranteed Hours and Available Hours for the Contract Year.

“Available Hours” means the number of hours in which a Turbine was electrically interconnected at the Project. Available Hours include all Excused Hours. Available Hours will also include the time during which a Turbine is deliberately de-energized to optimize output from the Project and the time required to return Turbines to service after termination of any Excused Hours event.

“Average Environmental Attribute Value” means the fair market price (expressed in \$/MWh or \$/MW, as applicable) of RECs of the same vintage and quality as the RECs to be transferred under this Agreement, determined by averaging the price quotes from two independent third party brokerage services, reasonably selected by Buyer.

“Average Weighted Energy Value” means [●].

“Damages Rate” means, for any Contract Year, an amount equal to (a) the Average Weighted Energy Value for such period, minus (b) the Fixed Price for such period, plus (c) 110% multiplied by the Average Environmental Attribute Value for such Contract Year; *provided* that the Damages Rate will never be less than \$0/MWh.

“Excused Hours” means those hours during which Seller is unable to schedule or deliver Energy to the Resource Node as a result of a (i) Curtailment, (ii) Emergency, (iii) Force Majeure event, (iv) Buyer’s failure to perform (other than due to a breach by Seller of its obligations under the Agreement) or (v) other hours during which Seller is unable for any reason (other than due to a breach by Seller of its obligations under the Agreement) to deliver any Energy that the Project is otherwise capable of producing and delivering to the Resource Node.

“Guaranteed Availability” is defined in Section 2.1 of this Schedule.

“Guaranteed Availability Percentage” means for the first Contract Year, 85%, and for each Contract Year thereafter, 90%.

“Guaranteed Hours” means the Period Hours multiplied by the Guaranteed Availability Percentage.

“Period Hours” means 8760 hours for each Turbine in operation in any given Contract Year.

## Section 2. Availability Guarantee.

2.1. Availability Guarantee. Seller guarantees that the Project will achieve an Actual Availability Percentage during each Contract Year equal to or greater than the Guaranteed Availability Percentage (the “Guaranteed Availability”).

2.2. Availability Damages. For any Contract Year during which Seller fails to achieve the Guaranteed Availability, Seller will pay Buyer liquidated damages in the amount equal to the product of (a) the Availability Shortfall and (b) the Damages Rate (“Availability Damages”).

2.3. Annual Report. No later than the 15 days after each Contract Year, Seller shall deliver to Buyer a calculation showing Seller’s computation of the Actual Availability Percentage of the Project for the previous Contract Year and the Availability Damages, if any, due to Buyer (the “Annual Report”). If a payment is due from Seller, Seller will pay such damages within 30 days after the end of the Contract Year for which Availability Damages are owed.

**SCHEDULE D**

**NOTICES**

**SELLER:**

[TO BE COMPLETED]

**BUYER:**

[TO BE COMPLETED]

**Payments**

Payments to Seller will be made by wire transfer to the following account:

**Wire Transfer Only:**

Pay: [TO BE COMPLETED]

For the Account of: [TO BE COMPLETED]

Account No./CHIPS UID: [TO BE COMPLETED]

Fed. ABA No.: [TO BE COMPLETED]

**ACH Transfer Only:**

Pay: [TO BE COMPLETED]

For the Account of: [TO BE COMPLETED]

Account No.: [TO BE COMPLETED]

Fed. ABA No.: [TO BE COMPLETED]

Payments to Buyer will be made by wire transfer to the following account:

**Wire Transfer Only:**

Pay: [TO BE COMPLETED]

For the Account of: [TO BE COMPLETED]

Account No./CHIPS UID: [TO BE COMPLETED]

Fed. ABA No.: [TO BE COMPLETED]

**ACH Transfer Only:**

Pay: [TO BE COMPLETED]

For the Account of: [TO BE COMPLETED]

Account No.: [TO BE COMPLETED]

Fed. ABA No.: [TO BE COMPLETED]

**SCHEDULE E**

**SELLER INSURANCE REQUIREMENTS**

[TO BE COMPLETED]

**SCHEDULE F**



**SCHEDULE G**  
**ENVIRONMENTAL MATTERS**

**EXHIBIT 1**

**Example Make-Whole Payment**

**EXHIBIT 2**

**Example Settlement Amount**

**EXHIBIT 4**

**Annual Production Tax Credit Value**