DRAFT
NOT APPROVED
8/17/21

POWER PURCHASE AGREEMENT

BETWEEN

[[INSERT]]

AND

AVISTA CORPORATION

This Standard Form of Power Purchase Agreement is indicative of the terms Avista Corporation expects to be included in a power purchase agreement to obtain the output from resources that may be acquired through its RFP. Some terms of this Standard Form of Power Purchase Agreement are only applicable to certain types of resources and, therefore, certain terms will need to be modified, deleted, or added, as appropriate, to reflect the actual resource(s) from which output will be acquired through the RFP. The terms of the Standard Form of Power Purchase Agreement are subject to negotiation between the parties and such terms are subject to change as necessary to reflect the parties' negotiations and the relevant circumstances associated with any particular bid, including the type, size, location, and attributes of the applicable resource. This indicative Standard Form of Power Purchase Agreement does not constitute a legal offer or otherwise create a binding agreement or obligation to consummate any contemplated transaction. Any such obligation or agreement will be created only by the execution of definitive agreements by both parties, the provisions of which, if so executed, will supersede this Standard Form of Power Purchase Agreement and all other agreements, if any, between a bidder and Avista related to this term sheet.

This Standard Form of Power Purchase Agreement is not applicable for any resource to be owned by Avista Corporation. The terms and conditions for any acquisition or development of any Avista Corporation-owned resource shall be subject to negotiation, and mutual agreement, of the parties. Any such obligation or agreement will be created only by the execution of definitive agreements by both parties.

POWER PURCHASE AGREEMENT

This Power Purchase Agreement dated _____ ___, 20__ ("Effective Date") is made by and between Avista Corporation, a Washington corporation ("Avista"), and [[INSERT]], LLC, a [[INSERT]] ("Seller"). Avista and Seller are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, in 2021, Avista solicited requests for proposals to purchase additional resources, or the output from additional resources, including any energy, capacity, and Environmental Attributes. In response to Avista's request, Seller submitted a proposal to provide [[INSERT ENERGY/CAPACITY/EAS, AS APPLICABLE]];

WHEREAS, Seller will [[design, construct, own, operate and maintain]] an electric power generating facility in [[INSERT LOCATION]] as more fully described in Exhibit A;

WHEREAS, Seller will deliver and sell, and Avista will receive and purchase the output generated from the Facility subject to the terms of this Agreement; and

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

Unless otherwise required by the context in which any term appears, (a) capitalized terms used in this Agreement have the meanings specified in this Section 1; (b) the singular shall include the plural and vice-versa; (c) references to "Sections," "Schedules," "Appendices," or "Exhibits" (if any) shall be to sections, schedules, appendices, or exhibits hereof; (d) all references to a particular entity shall include a reference to such entity's successors and permitted assigns; (e) the words "herein," "hereof," and "hereunder" shall refer to this Agreement as a whole and not to any particular section hereof; (f) the word "including" shall mean "including, without limitation," and the word "include" shall mean "include, without limitation," (g) all accounting terms not specifically defined herein shall be construed in accordance with GAAP; and (h) references to this Agreement shall be a reference to this Agreement and all schedules, appendices, and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time in accordance with this Agreement.

1.1 "Abandonment" means the failure to issue full notice to proceed to applicable contractors on or before [[INSERT DATE]], or the voluntary cessation of construction (at a time after full notice to proceed has been issued to applicable contractors) or operation of the Facility, for a continuous period of forty-five (45) consecutive days, except for events of Force Majeure or seasonal construction requirements, and the failure of Seller,

within thirty (30) days of receipt of notice from Avista of such cessation, to resume construction or operation.

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

1.3 "After-Tax Value" means, an amount equal to (x), which is calculated as (1) the Deemed Facility Output (in MWh) during any Discretionary Curtailment, *multiplied by* (2) the then-current Production Tax Credit Rate (in $/MWh) in effect at the time of such Discretionary Curtailment, *divided by* (y), which is calculated as one (1.00) *minus* the then-current highest marginal federal income tax rate applicable to U.S. corporations (excluding subchapter S corporations), expressed as a decimal (e.g., 0.21). The After-Tax Value for a Discretionary Curtailment may be expressed by the following formulas:

After-Tax Value = x/y ***or***

$$\text{After-Tax Value} = \frac{\text{Deemed Facility Output} * \text{then-current Production Tax Credit Rate}}{1 - \text{the then-current highest marginal federal income tax rate applicable to U.S. Corporations (excluding subchapter S corporations)}}$$

Avista will estimate (A) the Production Tax Credit Rate and (B) the highest marginal federal income tax rate applicable to U.S. Corporations (excluding subchapter S corporations) (collectively, the "After-Tax Value Inputs") to be used for a calendar year during the Term as of the first business day of each such calendar year and shall promptly thereafter notify Seller in writing of such estimated After-Tax Value Inputs. Seller shall have ten (10) days after receipt of such notice to object in writing to the After-Tax Value Inputs estimated for such calendar year. If Seller does not object to an estimated After-Tax Value Input provided by Avista within ten (10) days after receipt, Seller shall be deemed to be in agreement with such estimate. If Seller submits a timely objection to an estimated After-Tax Value Input to Avista, the Parties will promptly meet and confer in good faith to calculate a mutually agreeable After-Tax Value Input for the applicable calendar year. To the extent that the Parties are unable to mutually agree on an After-Tax Value Input for any calendar year, the last undisputed After-Tax Value Input shall apply until such time as the Parties mutually agree to a new After-Tax Value Input. Notwithstanding the foregoing, the Parties acknowledge and agree that the Production Tax Credit Rate shall be finalized pursuant to applicable law by the Internal Revenue Service during the course of each calendar year during the Term, including any adjustments due to inflation. In any calendar year, the Production Tax Credit Rate estimated by Avista (or mutually agreed to by the Parties) in accordance with this paragraph shall be used as an After-Tax Value Input, until the Production Tax Credit Rate for the applicable calendar year is finalized by the Internal Revenue Service. Upon finalization by the Internal Revenue Service, the Production Tax Credit Rate to be used as an After-Tax Value Input shall be adjusted accordingly. To the extent (i) the final Production Tax Credit Rate differs from the estimated Production Tax Credit Rate during any Discretionary Curtailment or (ii) the Parties

mutually agree on an After-Tax Value Input for any Discretionary Curtailment that differs from an After-Tax Value Input then used, the After-Tax Value for such period shall be recalculated and Seller or Avista, as applicable, shall make the other Party whole for any over- or under-payment with respect to any After-Tax Value previously paid.

1.4 "Agreement" means this Power Purchase Agreement, including all schedules, appendices, and exhibits to this Power Purchase Agreement, and any written amendments.

1.5 "Avista" shall have the meaning provided in the introductory paragraph of this Agreement.

1.6 "Business Day" means every day other than a Saturday or Sunday or a national holiday. National holidays shall be those holidays observed by NERC.

1.7 "Cash" means the lawful currency of the United States of America.

1.8 "Claims" shall have the meaning provided in Section 15.1 of this Agreement.

1.9 "Commercial Operation" means the conditions for Commercial Operation required by Section 5.2 of the Agreement are satisfied.

1.10 "Commercial Operation Date" means the Commercial Operation Date provided by Avista to Seller pursuant to Section 5.1.15 of the Agreement.

1.11 "Commercial Operation Year" means any consecutive 12-month period during the Delivery Term of this Agreement, commencing with first day of the calendar month immediately following the [[Initial Delivery Date/Commercial Operation Date]] or any of its anniversaries.

1.12 "Confirmation Request" shall have the meaning provided in Section 5.1.15 of this Agreement.

1.13 "Credit Rating" means with respect to a party or entity, on any date of determination, the respective ratings then assigned to such party's or entity's senior, unsecured long-term debt or deposit obligations not supported by third party credit enhancement by S&P or Moody's.

1.14 "Credit Support Security" means a Cash deposit, Letter of Credit, Guaranty, or other form of security provided pursuant to Section 17.

1.15 "Daily Energy Replacement Damages" shall have the meaning provided in Exhibit M of this Agreement.

1.16 "Daily REC Replacement Damages" shall have the meaning provided in Exhibit M of this Agreement.

1.17 "Deemed Facility Output" shall mean the amount of Delivered Facility Output that would have been delivered by Seller but for a Discretionary Curtailment, based on actual wind and availability data during such Discretionary Curtailment.

1.18 "Default" shall have the meaning provided in Section 18.1 of this Agreement.

1.19 "Defaulting Party" shall have the meaning provided in Section 18.1 of this Agreement.

1.20 "Delay Liquidated Damages" means the damages payable to Avista due to Seller's failure to achieve Commercial Operation by the Scheduled Operation Date as set out in Section 5.3 of this Agreement.

1.21 "Delay Period" means the number of days past the Scheduled Operation Date until the Facility achieves Commercial Operation.

1.22 "Delay Security" shall have the meaning provided in Section 17.1.1 of this Agreement.

1.23 "Delivered Facility Output" means the amount of Gross Facility Output, net of Facility Service Power and Losses, delivered to Avista at the Point of Delivery.

1.24 "Delivery Term" shall have the meaning provided in Section 6.5 of this Agreement.

1.25 "Disclosing Party" shall have the meaning provided in Section 23.1 of this Agreement.

1.26 "Discretionary Curtailment" shall have the meaning provided in Section 10.3 of this Agreement.

1.27 "Discretionary Ramp Rate Adjustment Request" shall have the meaning provided in Section 10.4 of this Agreement.

1.28 "Dispute" shall have the meaning provided in Section 22.2 of this Agreement.

1.29 "Effective Date" shall have the meaning provided in the introductory paragraph of this Agreement.

1.30 "Environmental Attributes" means any and all certificates, credits, benefits, emissions reductions, 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 Facility or the generation of energy by the Facility, and the delivery of such energy to the electricity grid, and include without limitation, any of the same arising out of any current or future legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury,

or implementing the United Nations Framework Convention on Climate Change ("UNFCCC") or the Kyoto Protocol to the UNFCCC or crediting "early action" 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 (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the "CAMD"), but specifically excluding investment tax credits, Production Tax Credits, any other U.S. federal tax credits based on energy production for which the Facility is eligible, and cash grants associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with ownership of the Facility that are applicable to a state or federal income tax obligation, if any. Environmental Attributes also include the reporting rights or renewable energy certificates ("RECs") associated with these Environmental Attributes. Environmental Attributes include without limitation all "Environmental Attributes" and all "Green Attributes" as those terms are defined in Appendix A-1 and Appendix A-2 of California Public Utilities Commission D. 08-08-028 in R. 06-02-012. RECS are accumulated on a MWh basis and one REC represents the Environmental Attributes associated with one MWh of energy. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the Facility.

1.31 "Excused Hours" or "EH" shall mean the number of hours during a Performance Period when either Force Majeure or curtailment under Section 10 is in effect. Hours during which both such conditions exist shall only be counted once.

1.32 "Expected Annual Energy" or "EAE" shall designate the amount of Delivered Facility Output which the Facility is expected to produce in an average Commercial Operation Year, exclusive of Section 10 curtailment. The Parties agree that, as of the Effective Date the Expected Annual Energy is defined to be the amount [[INSERT]] MWh, but that amount will be revised to reflect the P50 Energy in the final wind study report to be submitted to Avista prior to the Commercial Operation Date, and such revised Expected Annual Energy will be used thenceforth.

1.33 "Expected Capacity" shall have the meaning provided in Exhibit A to this Agreement and may be expressed in MW or converted to kilowatts, as applicable.

1.34 "Facility" means the Site and the electric energy generating facilities, including all equipment and structures necessary to generate and supply electric energy up to the Point of Interconnection, and to monitor, manage and control such electric energy, all as more particularly described in Exhibit A.

1.35 "Facility Financing" means the obligations of Seller to any financing party or tax equity provider pursuant to the Financing Documents, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

1.36 "Facility Lender" means, collectively, any financing or tax equity party(ies) providing any Facility Financing and any successor(s) or assigns thereto.

1.37 "Facility Service Power" means the electric power or energy used by the Facility (generated by the Facility or provided by Avista) during its operation to operate equipment that is auxiliary to primary generation equipment including, but not limited to, pumping, generator excitation, heating and cooling or other operations related to the production of electric energy by the Facility.

1.38 "Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, tax equity agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating solely to the development, bridge, construction and/or permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller solely in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

1.39 "Force Majeure" shall have the meaning provided in Section 19.1 of this Agreement.

1.40 "Forced Outage" means any condition at the Facility that requires immediate removal of the Facility, or some part thereof, from service, from another outage state, or from a reserve shutdown state. This type of outage results from circumstances such as (without limitation) immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips or controlled shutdowns in response to Facility conditions and/or alarms.

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

1.42 "GAAP" means generally accepted accounting principles as in effect from time to time in the United States.

1.43 "GME Cure" shall have the meaning provided in Section 6.6.2 of this Agreement.

1.44 "GME Damages" shall have the meaning provided in Section 6.6.2 of this Agreement.

1.45 "GME Damages Calculation" shall have the meaning provided in Section 6.6.2 of this Agreement.

1.46 "GME Failure" means Seller's failure to deliver to Avista a quantity of Delivered Facility Output that is greater than or equal to the Guaranteed Minimum Energy required by Section 6.6 for the applicable Performance Period.

1.47 "Gross Facility Output" means the sum of the electrical power generated by the Facility, including energy and capacity, as measured at each generator terminal expressed in kWh or kW, respectively.

1.48 "Guaranteed Minimum Energy" or "GME" shall have the meaning provided in Section 6.6.1 of this Agreement.

1.49 "Guaranty" means a guaranty, in form reasonably acceptable to Avista, provided by Clearway Renew LLC or by another Affiliate of Seller that has a Credit Rating of Baa3 or higher by Moody's or BBB- or higher by Standard & Poor's.

1.50 "Hourly Quantity" means the Seller's Delivered Facility Output hourly expected forecast matrix for the Facility in megawatt-hours per hour for each month (Exhibit Q) with the Expected Capacity as stated in Exhibit A.

1.51 "Independent Engineering Certification" means certifications detailed in Section 5.1.6 provided by DNV or another nationally recognized and licensed professional engineer having no direct or indirect, legal, or equitable ownership interest in the Facility, in Seller or in any Affiliate of Seller.

1.52 "Initial Capacity Determination" shall have the meaning provided in Section 5.1.7 of this Agreement.

1.53 "Initial Delivery Date" the first day that Seller delivers Delivered Facility Output to Avista pursuant to the terms of this Agreement. This definition shall only apply to existing resources for which there is no Test Energy and for which there will not be a Commercial Operation Date.

1.54 "Initial Negotiation End Date" shall have the meaning provided in Section 22.2 of this Agreement.

1.55 "Interconnection Agreement" means that certain interconnection agreement between Seller and the transmission provider that the Facility is connected to, attached as Exhibit C, as may be amended from time to time.

1.56 "Interconnection Facilities" means, if applicable, all facilities required to connect the Facility to the Point of Interconnection, including connection, transformation, switching, relaying and safety equipment. Interconnection Facilities shall also include all telemetry, metering, cellular telephone, and/or communication equipment required under this Agreement regardless of location.

1.57 "Leases" shall have the meaning provided in Section 4.2.

1.58 "Lender Consent" shall have the meaning provided in Section 21.2 of this Agreement.

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

(a) is issued by a Qualified Institution;

(b) by its terms, permits Avista to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

(c) if issued by a foreign bank with a U.S. branch, permits Avista to draw upon the U.S. branch;

(d) for Operating Security, shall be continuous over the Delivery Term of the Agreement, automatically renewing in one year increments. If on or following the sixtieth (60^{th}) day prior to the expiration date of such Letter of Credit, Avista has not received from the issuing bank an amendment renewing the Letter of Credit for a subsequent year, or has not been provided a replacement Letter of Credit from a Qualified Institution in substantially the same form as the existing Letter of Credit, Avista will be permitted to draw on the Letter of Credit up to the face amount of the Letter of Credit in accordance with the terms and conditions of such Letter of Credit.

1.60 "Letter of Credit Default" means any of the following with respect to a Letter of Credit:

(a) the issuer of the Letter of Credit fails to meet the standards for a Letter of Credit contained in the Agreement definition of Letter of Credit;

(b) the issuer of the Letter of Credit fails to comply with or perform its obligations under the Letter of Credit;

(c) the issuer of the Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of the Letter of Credit;

(d) the issuer of the Letter of Credit fails to honor a properly documented request to draw on the Letter of Credit; or

(e) the issuer of the Letter of Credit becomes bankrupt.

1.61 "Losses" means the loss of electrical power, including energy and capacity, occurring as a result of the transformation and transmission of energy between the Facility and the Point of Delivery.

1.62 "Moody's" means Moody's Investor Services, Inc., or its successor.

1.63 "MW" means megawatt. One thousand kilowatts equals one megawatt.

1.64 "MWh" means megawatt-hour. One thousand kilowatt-hours equals one megawatt-hour.

1.65 "Market Energy Price" means, for each time period at issue, the applicable index price or prices for electricity at the Mid-Columbia hub ("Mid-C"), or its successor, or as agreed to by the Parties where no successor exists.

1.66 "Nameplate Capacity Rating" means the maximum generating capacity of the Facility, as determined by the generation equipment manufacturer, and expressed in kilowatts (kW).

1.67 "NERC" means the North American Electric Reliability Corporation or its successor.

1.68 "Non-Defaulting Party" shall have the meaning provided in Section 18.1 of this Agreement.

1.69 "Off-Peak" means all hours other than On-Peak hours.

1.70 "On-Peak" means the hours ending 0700 through 2200 Pacific Prevailing time, Monday through Saturday, excluding national holidays defined by NERC.

1.71 "Operating Committee" shall have the meaning provided in Section 11.3.1 of this Agreement.

1.72 "Operating Security" shall have the meaning provided in Section 17.1.2 of this Agreement.

1.73 "Organizational Agreements" shall have the meaning provided in Section 5.1.1 of this Agreement.

1.74 "Party" or "Parties" shall have the meaning provided in the introductory paragraph of this Agreement.

1.75 "P50 Energy" means the amount of energy expected to be delivered to the Point of Delivery annually, with a probability of exceedance of fifty percent (50%), as calculated at Seller's sole expense by AWS Truepower, DNV, Natural Power, Vaisala or another nationally recognized wind expert reasonably acceptable to Avista.

1.76 "Performance Period" shall have the meaning provided in Section 6.6.1 of this Agreement.

1.77 "Performance Period Hours" or "PPH" shall have the meaning provided in Section 6.6.1 of this Agreement.

1.78 "**Person**" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.

1.79 Reserved

1.80 "Point of Delivery" means the Point of Interconnection or such other point identified in Exhibit A where Seller is to deliver Delivered Net Output to Avista.

1.81 "Point of Interconnection" shall have the meaning provided in the Interconnection Agreement and as further described in Exhibit B.

1.82 "Production Tax Credit" shall mean the production tax credit applicable to electricity produced from certain renewable resources pursuant to 26 U.S.C. §45.

1.83 "Production Tax Credit Rate" shall mean the Production Tax Credit rate as determined pursuant to 26 U.S.C. §45 and as revised and adjusted pursuant to 26 U.S.C. §45 by the Internal Revenue Service.

1.84 "Proprietary Information" shall have the meaning provided in Section 23.1 of this Agreement.

1.85 "Prudent Utility Practices" means the practices, methods, and acts commonly and ordinarily used in electrical engineering and operations by a significant portion of the electric power generation and transmission industry, in the exercise of reasonable judgment in the light of the facts known or that should have been known at the time a decision was made, that would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

1.86 "Qualified Institution" shall mean a United States commercial bank, or if a foreign bank, having a domestic branch in the United States that can issue Letters of Credit; and such issuing bank or a financial institution fully guaranteeing the Letter of Credit obligation of such issuing bank shall have a minimum Credit Rating on its long-term senior unsecured debt of "A-" by Standard and Poor's and "A3" by Moody's.

1.87 "Quality Assurance Program" shall have the meaning provided in Section 5.1.8 of this Agreement.

1.88 "Recipient" shall have the meaning provided in Section 23.1 of this Agreement.

1.89 "Referral Date" shall have the meaning provided in Section 22.2 of this Agreement.

1.90 "Replacement REC Price" shall mean an amount equal to $____/MWh.

1.91 "Sales and Use Tax Exemption" shall have the meaning provided in Section 7.2.2 of this Agreement.

1.92 "S&P" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.), or its successor.

1.93 "Scheduled Operation Date" means the date specified in Section 5.3.1 when Seller anticipates achieving Commercial Operation or the Initial Delivery Date, as applicable.

1.94 "Scheduled Outage" means any outage which is scheduled by the Seller pursuant to Section 11.4 to remove electrical or mechanical equipment from service for repair, replacement, maintenance, safety or any other reason, and which thereby limits the generating capability of the Facility to less than the Initial Capacity Determination.

1.95 "Seller" shall have the meaning provided in the introductory paragraph of this Agreement.

1.96 "Site" means the parcel(s) of real property on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Exhibit A to this Agreement.

1.97 "Special Purpose Entity" means a limited liability company which at all times on and after the date hereof:

(a) shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets except to the extent permitted herein, (iii) modify, amend, terminate or waive any provisions of its organizational documents in a manner inconsistent with its status as a Special Purpose Entity;

(b) is and will be organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement with Avista and other incidental activities and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(c) except for the ownership of undeveloped or unused leased land, is not, and will not be engaged in any business unrelated to the acquisition, development, ownership, management or operation of the Facility; *provided, however*, that Seller shall divest of all property rights and interests of undeveloped or unused leased land not included in the Facility, as permitted under Section 4.3.2, prior to any development or usage of said property rights and interests for purposes other than those provided for in this Agreement. For the purpose of owning and divesting of undeveloped or unused leased land, as provided under Section 4.3.2 prior to any development or usage thereof for purposes other than this Agreement, Seller shall amend or terminate, as applicable, the Leases to remove such leased land from the Leases and cause the lessor(s) to execute replacement leases or other property agreements with other Persons applicable to the leased land divested;

(d) except for the ownership of undeveloped or unused leased land not included in the Facility as described in (c) above, does not have and will not have, any assets other than those related to the Facility;

(e) will maintain its accounts, books, resolutions, agreements and records separate from any other Person and will file its own tax returns;

(f) will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by a Person other than an Affiliate of Seller and not as a division or part of any other Person;

(g) will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(h) will not make loans to any Person or hold evidence of indebtedness issued by any other Person (other than (i) cash and investment-grade securities issued by a Person that is not an Affiliate of Seller, or (ii) subordinated unsecured loans made to Seller by its Affiliates solely for the purposes of the development, construction, and operation of the Facility, *provided* that such loans that are for development or construction shall be either converted into equity of Seller or repaid on the terms and conditions permitted in the Financing Documents prior to the Commercial Operation Date);

(i) will not identify its members, or any Affiliate of any member, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(j) will not enter into or be a party to, any transaction with its members or Affiliates, except (i) in the ordinary course of its business and on terms which, taken as a whole, are reasonable and no less favorable to Seller than would be obtained in a comparable arm's-length transaction with an unrelated third party or (ii) in connection with this Agreement;

(k) will not guarantee any obligations of an Affiliate;

(l) will not commingle its funds or assets with those of any Person and has not participated and will not participate in any joint or connected bank accounts with any other Person;

(m) will hold its assets in its own name;

(n) will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; *provided, however*, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(o) will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets.

(p) will observe all limited liability company formalities;

(q) will not assume or guarantee or become obligated for the debts of any other Person (other than its direct owner solely with respect to Facility Financing

incurred under the Financing Documents with respect to the Facility) and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person (other than its direct owner solely with respect to Facility Financing incurred under the Financing Documents with respect to the Facility) except as permitted pursuant to this Agreement;

(r) will not acquire obligations or securities of its members or any Affiliate;

(s) will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared space and services performed by any employee of an Affiliate;

(t) will not pledge its assets for the benefit of any other Person other than any Facility Lender pursuant to the Financing Documents with respect to the Facility;

(u) has, and will have an operating agreement that provides that it will not: (A) dissolve, merge, liquidate or consolidate; (B) sell all or substantially all of its assets; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition, in any material respect; or (D) without the affirmative vote of all of its members, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial ownership interest;

(v) is and intends to remain solvent and intends to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall have or become due, and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; and

(w) will have no unsecured indebtedness other than the indebtedness made by any Facility Lender and subordinated debt provided by its Affiliate subject to clause (h) above; *provided, however*, that it may have such other liabilities as are permitted pursuant to the Financing Documents.

1.98 "Start-Up Testing" means the tests required by the generation equipment manufacturer, the Seller and/or Avista (acting as a Transmitting Entity) documenting that each element of the Facility is ready to support reliable production of electric energy.

1.99 "Term" shall have the meaning provided in Section 2 of this Agreement.

1.100 "Test Energy" shall be the Delivered Facility Output produced by the Facility during Start-Up Testing and before the start of the Delivery Term.

1.101 "Total Output" shall have the meaning provided in Section 6.1 of this Agreement.

1.102 "Transmitting Entity" means any entity or entities that provide transmission and/or interconnection service for electric energy that is delivered to Avista at the Point of Delivery.

1.103 "WECC" means the Western Electricity Coordinating Council or its successor.

1.104 "WREGIS" means the Western Renewable Energy Generation Information System, or a successor.

1.105 "WREGIS Operating Rules" means the then current operating rules and requirements adopted by WREGIS, as such rules and requirements may be amended, supplemented or replaced (in whole or in part) from time to time.

2. TERM

Upon execution and delivery of this Agreement by the Parties, this Agreement shall be effective on the Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon the occurrence of the Effective Date and shall continue through midnight, Pacific Time, on the date that is [[INSERT]] Commercial Operation Years after the [[Commercial Operation Date/Initial Delivery Date]] (the "Term"), unless otherwise terminated as provided herein.

3. WARRANTIES

3.1 Avista's Warranties.

3.1.1 No Warranty by Avista. Avista makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review Seller's design, specifications, equipment or Facility shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC and/or WECC reliability standard associated with the Facility or the delivery of electric energy from the Facility to the Point of Delivery.

3.1.2 General Warranties.

(a) Avista is a duly organized, validly existing and in good standing under the laws of the State of Washington and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under this Agreement.

(b) The execution, delivery, and performance by Avista of this Agreement have been duly authorized by all necessary corporate action, and no additional consent or approval of Avista's Board of Directors is required.

(c) The execution and delivery of this Agreement, the consummation of the transaction contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions, or provisions of any legal requirements, or its joint powers agreement or bylaws or any deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Avista is a party or by which it or any of its property is bound, or result in a breach or default under any of the foregoing.

(d) This Agreement constitutes a legal, valid and binding obligation of Avista enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general or equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) There is no pending, or to the knowledge of Avista, threatened action or proceeding affecting Avista before any governmental authority which purports to affect the legality, validity, or enforceability of this Agreement.

3.2 Seller's Warranties.

3.2.1 No Reliance. Seller warrants and represents that: (a) Seller has investigated and determined that it is capable of performing and will perform the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with this Agreement; (b) all professionals and experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller; and (c) Seller will comply with all applicable laws and regulations and shall obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Facility, in each case, in all material respects.

3.2.2 Facility Construction Warranty. Seller warrants and covenants that it will perform, or cause to be performed, all construction in a good and workmanlike manner and in accordance with applicable standards, Prudent Utility Practices, and other provisions of this Agreement. Seller warrants and covenants that on the Commercial Operation Date the Facility will comply in all respects with the requirements of this Agreement, and that the Facility will comply with, and be capable of operation, in accordance with applicable laws and regulations and the warranties in this Agreement.

3.2.3 Facility Operation and Maintenance Warranty. Seller warrants and guarantees that it will monitor the operation and maintenance of the Facility and that said operation and maintenance of the Facility is, and will be, in full compliance with all applicable safety and environmental requirements and with Prudent Utility Practice.

3.2.4 General Warranties.

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under this Agreement.

(b) The execution, delivery, and performance by Seller of this Agreement have been duly authorized by all necessary action, and do not and will not require any consent or approval of Seller's managing member, or equity holders other than that which has been obtained.

(c) The execution and delivery of this Agreement, the consummation of the transaction contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions, or provisions of any legal requirements, or its joint powers agreement or bylaws or any deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a breach or default under any of the foregoing, and Seller has obtained or will obtain all permits, licenses, approvals, and consents of governmental authorities required for the lawful performance of its obligations under this Agreement. Seller further warrants that it shall maintain in good standing all permits, licenses, approvals, and consents of governmental authorities required for the lawful operation of the Facility in accordance with this Agreement, Prudent Utility Practices, and applicable law.

(d) This Agreement constitutes a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general or equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any governmental authority which purports to affect the legality, validity, or enforceability of this Agreement.

(f) Seller shall at all times comply with the requirements of, and qualify as, a Special Purpose Entity.

(g) Seller has (i) not entered into this Agreement or any other documents related thereto with the actual intent to hinder, delay, or defraud any creditor and (ii) received reasonable equivalent value in exchange for its obligations under this Agreement. No petition in bankruptcy has been filed against Seller, and neither Seller nor any of its constituent Persons has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

4. FACILITY AND SITE

4.1 Development of Facility. Seller shall use commercially reasonable and diligent efforts to site, permit, develop, finance, and construct the Facility.

4.2 Facility and Site. Seller shall enter into such leases and property agreements which provide Seller with leaseholds or other property rights and interests which shall include the entire Site (collectively referred to herein as the "Leases"). The Leases shall enable Seller to construct and install the Facility, including any related collection facilities and other improvements, on the Site. Seller shall provide copies of all Leases to Avista on a confidential basis; *provided that* Seller may redact or withhold any Lease or portion thereof to the extent necessary to comply with any disclosure restrictions thereof; *further provided, that* Seller shall use commercially reasonable efforts to negotiate with or seek permission from landowners in order to facilitate disclosure of each Lease to Avista. To the extent recordable under federal or state law, all Leases shall be duly recorded in the land records of the applicable county or counties of the State in which the Facility is located or as otherwise provided by applicable law.

4.3 Other Development or Improvements.

4.3.1 No Adverse Actions; Shared Facilities. Neither Party will take any action on or around the Site that will adversely impact or interfere with the operation or use of the Site or Facility pursuant to this Agreement. Avista agrees that, in the event Seller decides to develop a new facility that may require access to and utilization of the equipment and structures comprising the Facility, Seller may share such equipment and structures pursuant to operating, maintenance, shared facilities, and other appropriate agreements; *provided that* prior to the commencement of construction of such new facility Seller must submit a report by an independent, nationally recognized consultant selected by Avista which demonstrates to Avista's reasonable satisfaction that neither the new facility nor the sharing of facilities will cause any material adverse impact on the Facility or its production of Delivered Facility Output. All costs associated with the consultant shall be the responsibility of Seller.

4.3.2 Limitations on Development of the Site. Seller agrees that, with the exception of the development, construction, maintenance, replacement and repair of the Facility and its components, it will not develop or improve the property associated with the Leases without Avista's express written consent, not to be unreasonably withheld. Seller shall be entitled, by amendment or termination of any of the Leases, to remove any portions of or rights or interests in the premises covered by such Leases, other than the Site, acquired thereunder so long as such removal does not interfere with the operation or use of the Facility in any material respect.

4.3.3 Project Alterations. Seller (i) shall not undertake or permit any alterations or upgrades to the Facility which will result in a net addition or decrease to the Nameplate Capacity Rating or EAE of the Facility, and (ii) shall not undertake or permit any repairs or replacements which will result in a net addition or decrease by more than X percent (X%) of the Nameplate

Capacity Rating of the Facility, in either case without the consent of Avista. Unless the Parties agree otherwise, Avista will purchase and Seller shall deliver to Avista all additional Delivered Facility Output including all Environmental Attributes and other attributes as specified in Section 6 resulting from any alterations, repairs, replacements or upgrades for which Avista has consented in accordance with the terms of this Agreement.

4.4 Facility Output Controls. Seller shall incorporate in the Facility control system features which enable Seller to, and Seller shall:

(a) Limit the rate of increase, to the extent controllable, in Delivered Facility Output such that power increases at a rate of not more than ten (10) MW per minute. Limit the rate of decrease for Discretionary Curtailments under Section 10.3, to the extent controllable, in Delivered Facility Output such that power decreases at a rate of not more than ten (10) MW per minute; and

(b) Limit the Delivered Facility Output from the Facility to a set value as dictated by Avista under Section 10.

5. COMMERCIAL OPERATION; [[COMMERCIAL OPERATION DATE/INITIAL DELIVERY DATE]]

5.1 Conditions Prior to [[Commercial Operation/Initial Delivery Date]].

5.1.1 Facility Contracts. In addition to any other agreements that Seller is required to provide Avista under this Agreement, at the request of Avista, Seller shall promptly provide to Avista copies of the following major contracts and agreements which govern Seller and the design and construction of the Facility, as contemplated by this Agreement: (i) contracts for the manufacture, delivery and installation of the generation equipment and step-up transformation equipment; (ii) engineering, procurement and construction, or other engineering and construction agreements; (iii) applicable operating and maintenance agreements; and (iv) the organizational documents (including but not limited to Seller's LLC agreement) of Seller (the "Organizational Agreements") for Seller, *provided* that Seller shall have the right to redact any commercially sensitive information from the items delivered pursuant to clause (i) through (iii). Seller shall not make any changes to the Organizational Agreements that could reasonably be expected to affect Seller's status as a Special Purpose Entity without Avista's prior consent, which consent shall not be unreasonably withheld, provided that such consent shall not be required for modification or amendment of Seller's Organizational Agreements in connection with any tax equity financing.

5.1.2 Progress Reports. Commencing upon the execution of this Agreement, Seller shall submit to Avista, on the tenth (10^{th}) Business Day of each calendar month until the Commercial Operation Date is achieved, progress reports in a form reasonably satisfactory to Avista. These

progress reports shall notify Avista of the current status of the development and construction of the Facility.

5.1.3 Avista's Rights During Construction. Avista shall have the right to monitor the construction, start-up and Start-Up Testing of the Facility and Seller shall comply with all reasonable requests of Avista with respect to the monitoring of these events upon reasonable notice. Seller shall cooperate in such physical inspections of the Facility as may be reasonably requested by Avista during and after completion of construction. All persons visiting the Facility on behalf of Avista will comply with all of Seller's applicable safety and health rules and requirements. Avista's technical review and inspection of the Facility shall not be construed as endorsing the design thereof or as any warranty of safety, durability, or reliability of the Facility.

5.1.4 Licenses, Permits and Approvals. Seller shall at its own expense use commercially reasonable efforts to obtain all applicable environmental and other licenses, permits, and approvals required under applicable law for construction, ownership, operation and maintenance of the Facility and the Site. Upon Avista's request, Seller shall submit to Avista written evidence that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state, tribal or local authorities, including, but not limited to any necessary business licenses, environmental permits, easements, leases and all required approvals by any governmental authority. Avista shall have the right to inspect and obtain copies of all licenses, permits, and approvals related to the Facility or the Site held by Seller. Avista's inspection of such licenses permits, and approvals shall be at Avista's expense. Seller shall cooperate with Avista in any filings related to this Agreement that are made by Avista to any regulatory agency of competent jurisdiction, including but not limited to FERC, the Washington Utilities and Transportation Commission, and the Idaho Public Utilities Commission. Seller will use commercially reasonable efforts to promptly notify Avista of any known or expected inspections by any governmental authority relating to any license, permit, or approval related to the Facility or the Site; provided that Seller's unintentional failure to provide such a notice when warranted shall not be a material breach of this Agreement.

5.1.5 Opinion Letter. Prior to the Commercial Operation Date or Initial Delivery Date, as applicable, Seller shall submit to Avista an opinion letter signed by an attorney admitted to practice and in good standing in the state where the Facility is located providing an opinion that Seller's licenses, permits, and approvals as set forth in Section 5.1.4 above are legally and validly issued, are held in the name of the Seller, and based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of such opinion letter. The opinion letter will be in form and substance reasonably acceptable to Avista and will acknowledge that the attorney rendering such opinion understands that Avista is relying on said opinion.

5.1.6 Independent Engineering Certifications. If requested by Avista prior to the Commercial Operation Date or the Initial Delivery Date, as applicable, Seller shall submit to Avista Independent Engineering Certifications certifying the adequacy of the construction of the Facility and the operations and maintenance policy for the Facility in a form acceptable to Avista and will acknowledge that the nationally recognized and licensed professional engineer rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of such forms shall not be unreasonably withheld. A form of Independent Engineering Certification is attached hereto as Exhibit F.

5.1.7 Initial Capacity Determination. Prior to the Commercial Operation Date or Initial Delivery Date, as applicable, Seller shall submit to Avista a statement of the maximum generation capability of the Facility at the Point of Interconnection ("Initial Capacity Determination"), along with the Initial Capacity Determination documentation set forth in Exhibit D. Such Initial Capacity Determination shall be determined either by use of the sum of the generator(s) Nameplate Capacity Ratings less Facility Service Power and Losses or other means acceptable to Avista and shall be documented in reasonable detail and submitted to Avista by Seller. Avista shall accept or reject such Initial Capacity Determination in writing within 10 days after it is provided to Avista.

5.1.8 Quality Assurance Program. Seller shall develop, maintain, and use commercially reasonable efforts to comply with, a written quality assurance program acceptable to Avista (which acceptance shall not be unreasonably withheld) for the safe operation and maintenance of the Facility ("Quality Assurance Program"). Upon request of Avista, Seller shall provide Avista access to the Quality Assurance Program.

5.1.9 Interconnection Agreement. The Interconnection Agreement shall be in full force and effect prior to the start of Facility construction and as of the Commercial Operation Date or the Initial Delivery Date, as applicable.

5.1.10 Insurance. Insurance coverage required by Section 16 shall be in full force and effect prior to the start of Facility construction and as of the Commercial Operation Date or the Initial Delivery Date, as applicable.

5.1.11 Start-Up Testing. Prior to Start-Up Testing, Seller shall provide Avista with a written estimated schedule of Start-Up Testing. Such written estimate shall be updated not less frequently than once per calendar week during the period where Start-Up Testing occurs. Each update also shall include information detailing those turbines that have completed Start-Up Testing, and the specific turbines expected to enter Start-Up Testing during the following week. Prior to the Commercial Operation Date, Seller shall submit to Avista

evidence that Start-Up Testing for at least XX percent (XX%) of the generation associated with the Facility's Expected Capacity has been completed.

5.1.12 Network Resource Designation. Prior to the Commercial Operation Date or the Initial Delivery Date, as applicable, Seller shall provide to Avista all data requested by Avista to enable the Facility to be designated by Avista as a network resource.

5.1.13 Data Transfer Prior to Commercial Operation. Prior to the Commercial Operation Date or the Initial Delivery Date, as applicable, Seller, working in concert with Avista, shall establish communication between the Facility's SCADA system and Avista's SCADA system to enable transmission of the data required in Section 12.

5.1.14 Operating Security. Prior to the Commercial Operation Date or the Initial Delivery Date, as applicable, Seller shall have posted Operating Security in compliance with Section 17.

5.1.15 Written Confirmation. Prior to Commercial Operation or the Initial Delivery Date, as applicable, Seller shall request and obtain from Avista written confirmation that all conditions precedent to acceptance of electric energy have been fulfilled and request a Commercial Operation Date ("Confirmation Request"). Within ten (10) Business Days of receipt of such Confirmation Request, Avista shall either (i) determine that the requirements for the Commercial Operation Date or the Initial Delivery Date, as applicable, to occur set forth in Section 5.2 have been satisfied and, therefore, provide Seller a written notice of the Commercial Operation Date or the Initial Delivery Date, as applicable, (and such date shall be the next Business Day after the date of the Confirmation Request), or (ii) determine that one or more requirements for the Commercial Operation Date or the Initial Delivery Date, as applicable, to occur set forth in Section 5.2 are not yet satisfied, in which event Avista shall provide Seller written notice that one or more of such requirements in Section 5.2 have not been satisfied, accompanied by a reasonably detailed explanation for any such determination. In the event that Avista provides notice that one or more of the requirements for the Commercial Operation Date or the Initial Delivery Date, as applicable, to occur set forth in Section 5.2 have not been satisfied, Seller shall promptly correct such deficiencies. After all deficiencies are corrected, Seller shall reinitiate the process for receiving written confirmation under this Section 5.1.15 by again submitting a Confirmation Request, and Avista will promptly provide written confirmation once it has verified the requirements for the Commercial Operation Date to occur (and such date shall be the next Business Day after the date of the resubmitted Confirmation Request).

5.2 Commercial Operation Date.

The Commercial Operation Date may occur only upon or after: the requirements in Sections 5.1.4, 5.1.5, 5.1.6, 5.1.7, 5.1.9, 5.1.10, 5.1.11, 5.1.12, 5.1.13, 5.1.14,

and 5.1.15 of this Agreement are satisfied and Seller has demonstrated to Avista's reasonable satisfaction that the Facility is complete in all material respects, including all units of the Facility having completed Start-Up Testing, and being able to provide energy to the Point of Delivery in a consistent, reliable, and safe manner;

5.3 Delay Liquidated Damages; Delay Security.

5.3.1 Scheduled Operation Date. Time is of the essence in the performance of this Agreement and Seller understands and agrees that Avista is relying on Seller to meet the requirements of Section 5.2 on or before [[INSERT DATE]] (the "Scheduled Operation Date"). To the extent any delay is caused by (i) an event of Force Majeure, or (ii) solely by the action or inaction of Avista, the Scheduled Operation Date shall be extended one day for each day of such delay.

5.3.2 Commercial Operation. Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Operation Date. If the Commercial Operation Date occurs after the Scheduled Operation Date, as may be extended pursuant to Section 5.3.1, Seller shall pay Avista Delay Liquidated Damages pursuant to Sections 5.3.3 through 5.3.6.

5.3.3 Delay Liquidated Damages. Delay Liquidated Damages will be determined on a daily basis and shall be equal to the sum of the Daily Energy Replacement Damages and the Daily REC Replacement Damages. The Daily Energy Replacement Damages for any day shall not exceed $[[INSERT]]. The Daily REC Replacement Damages for any day shall not exceed $[[INSERT]]. The total Delay Liquidated Damages for the Delay Period shall not exceed the amount of the Delay Security. Daily Energy Replacement Damages for On-Peak hours and Off-Peak hours shall be calculated using the formula in Exhibit M. Further, example calculations are provided in Exhibit M.

5.3.4 Limit of Delay Liquidated Damages. Delay Liquidated Damages will be calculated pursuant to Section 5.3.3 for a maximum of 365 days past the Scheduled Operation Date. Failure of the Facility to achieve Commercial Operation within three hundred and sixty five (365) days of the Scheduled Operation Date shall constitute a material breach of this Agreement and, in such event, Avista may, at its sole option, terminate this Agreement upon written notice to Seller.

5.3.5 Delay Security. Seller shall post Delay Security in accordance with Section 17.1.1. Avista shall release the balance of the Delay Security (including any accumulated interest, if applicable) to Seller, at the earlier of: (i) four hundred and twenty (420) days after the Scheduled Operation Date; or (ii) no later than one Business Day after the Commercial Operation Date, provided the Seller has posted Operating Security as outlined in Section 17.1.2. Notwithstanding the foregoing, Seller shall not be required to post Delay Security for an Existing Facility. An Existing Facility is a Facility that existed in

substantially the same form as the Facility described in Exhibit A, and was in operation, prior to the Effective Date of this Agreement. For avoidance of doubt, the provisions regarding Delay Security and Delay Liquidated Damages in this Agreement shall not apply to an Existing Facility; *provided, however*, that Seller's failure to achieve the Initial Delivery Date by the Scheduled Operation Date shall be a material breach of this Agreement.

5.3.6 Payment of Delay Liquidated Damages. Avista may require Seller to pay Delay Liquidated Damages no more often than once per calendar month. Seller shall pay Avista any Delay Liquidated Damages within fifteen (15) Business Days of when Avista presents any Delay Liquidated Damages billings to Seller or the twentieth (20^{th}) of the month, whichever is later. If Seller fails to pay Avista any Delay Liquidated Damages when due, Avista may draw from the Delay Security such amounts as are necessary to recover amounts owing to Avista in Delay Liquidated Damages pursuant to this Agreement. Any failure by Avista to draw upon the Delay Security for any Delay Liquidated Damages due to Avista shall not prejudice Avista's rights to recover such Delay Liquidated Damages.

5.3.7 Pre-COD Liability. In the event of Abandonment by Seller prior to Commercial Operation, or this Agreement is terminated prior to Commercial Operation as a result of Seller's default of any material term of this Agreement, Seller shall forfeit the Delay Security and Avista shall be entitled to, and may draw on, the entire amount of the Delay Security, and Seller shall have no additional liability.

5.3.8 No Penalty. The Parties agree that Avista will incur substantial damages if the Facility fails to achieve Commercial Operation by the Scheduled Operation Date and that the damages Avista would incur due to such delay would be difficult or impossible to predict or calculate with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages and are not a penalty. In no event shall Avista be obligated to pay Delay Liquidated Damages.

6. DELIVERIES

6.1 Facility Output. During the Delivery Term, in accordance with and unless expressly excused by the provisions of this Agreement, Seller shall deliver to Avista and Avista shall receive from Seller all the Delivered Facility Output and Environmental Attributes associated with the Facility (together, the "Total Output").

6.2 Title and Risk of Loss. As between the Parties, Seller shall be deemed to be in control of the Gross Facility Output from the Facility up to and until delivery to and receipt by Avista at the Point of Delivery and Avista shall be deemed to be in control of the Delivered Facility Output from and after delivery to and receipt by Avista at the Point of Delivery. Title and risk of loss related to the Delivered Facility Output shall transfer from Seller to Avista at the Point of Delivery.

6.3 Environmental Attributes. Seller shall, pursuant to the provisions of Section 14, provide and convey to Avista all Environmental Attributes associated with the Facility and Seller hereby forfeits any claims or rights to such Environmental Attributes associated with the Facility in accordance with this Agreement. Seller represents and warrants that Seller holds the rights to all Environmental Attributes, and Seller agrees to convey and hereby conveys all such Environmental Attributes to Avista.

6.4 Exclusive Right to Total Output. In no event shall Seller have the right (i) to procure any element of the Total Output from sources other than the Facility for sale or delivery to Avista under this Agreement or (ii) to sell any of the Total Output to a third party.

6.5 Delivery Term. The "Delivery Term" will commence upon the Commercial Operation Date and will expire at midnight on the day that is twenty (20) Commercial Operation Years after the Commercial Operation Date, unless this Agreement is earlier terminated as provided herein. Avista shall have no obligation to receive or purchase any of the Total Output of the Facility from Seller prior to or after the Delivery Term, except that Avista will purchase Test Energy as provided in Section 7.3.

6.6 Guaranteed Minimum Energy.

6.6.1 Calculation of Guaranteed Minimum Energy. Throughout the Delivery Term, Seller shall be required to deliver to Avista Delivered Facility Output that is no less than the Guaranteed Minimum Energy ("GME") in each Commercial Operation Year ("Performance Period"); *provided, however*, that the last Performance Period of the Delivery Term may be less than a full Commercial Operation Year, in which case the Guaranteed Minimum Energy shall be prorated for the actual duration of such Performance Period. "Guaranteed Minimum Energy" means an amount of Delivered Facility Output in MWh equal to XX percent (XX%) of the Expected Annual Energy ("EAE") times the Performance Period Hours minus the Excused Hours ("EH"), the result is divided by the Performance Period Hours ("PPH"), where the Performance Period Hours is the number of hours in the Performance Period being evaluated. The formula for and an example calculation of Guaranteed Minimum Energy is provided in Exhibit J.

6.6.2 GME Damages. If Seller has a GME Failure, then within ninety (90) days after the last day of the last month of such Performance Period, Avista shall notify Seller of such failure. Seller may cure a GME Failure in a Performance Period by delivering to Avista no less than seventy-five percent (75%) of the Expected Annual Energy in the subsequent Performance Period ("GME Cure"). Upon Seller's successful completion of a GME Cure in such subsequent Performance Period, Seller shall have no further liability to Avista for the GME Failure. If Seller fails to deliver to Avista sufficient Delivered Facility Output to make the GME Cure for a given Performance Period, or if the GME Failure occurs in the last Commercial Operation Year such that there is no opportunity to cure the GME Failure in a subsequent Performance Period, Seller

shall pay Avista damages ("GME Damages") calculated pursuant to Exhibit K ("GME Damages Calculation").

6.6.3 GME Failure to Cure. After the GME Cure period has run, if Seller has not achieved the GME Cure, Avista will have forty five (45) days to notify Seller of such failure. Within forty five (45) days of the end of the GME Cure period, Avista shall provide notice to Seller of the amount of the GME Damages, if any, which Seller shall pay within sixty (60) days of the date of such notice. If Seller does not pay the undisputed portion of such GME Damages within the sixty (60) day time period, Avista may, at its option, draw from the Operating Security an amount equal to the GME Damages owed, or if the Operating Security is insufficient for that purpose, declare an event of Default pursuant to Section 18.1(e) of this Agreement. Seller may dispute Avista's calculation of the GME Damages amount only by promptly providing Avista with a detailed written statement setting forth the basis for Seller's alternative GME Damages amount.

6.6.4 No Penalty. The Parties agree that the damages sustained by Avista associated with Seller's failure to achieve the Guaranteed Minimum Energy requirement of this Section 6.6.4 would be difficult or impossible to predict or calculate with certainty, and that the GME Damages are an appropriate approximation of such damages and are not a penalty. In no event shall Avista be obligated to pay GME Damages.

7. PURCHASE PRICES AND PAYMENT

7.1 Delivery of Delivered Facility Output. Except when either Party's performance is excused as provided herein, throughout the Delivery Term Seller shall make available to Avista at the Point of Delivery all Delivered Facility Output and Avista shall take all Delivered Facility Output delivered to Avista at the Point of Delivery and pay the applicable rate specified in Sections 7.2 and 7.3 of this Agreement. For the avoidance of doubt, and except as otherwise expressly provided in Section 10.3 or elsewhere in this Agreement, Avista shall not be obligated to make any payment to Seller under this Agreement for any electrical power, including energy and capacity, which, regardless of reason or event of Force Majeure affecting either Party, (a) is not generated by the Facility; or (b) is not delivered to Avista at the Point of Delivery.

7.2 Delivered Facility Output Delivered During the Delivery Term.

7.2.1 Delivery Term Price. Commencing on the Commercial Operation Date and continuing for the Delivery Term, Avista shall pay Seller the price set forth in Exhibit L for Delivered Facility Output.

7.2.2 [[Sales and Use Tax Exemption. *[[to be negotiated if applicable]]*

7.2.3 Opportunity Zone Benefits. [[*to be negotiated if applicable.]]*

7.3 Test Energy Price. Seller shall sell and deliver all Test Energy produced by the Facility to Avista at the Point of Delivery and Avista shall receive and purchase all such delivered Test Energy at the lesser of (i) the price in Section 7.2 or (ii) the greater of (x) XX percent (XX%) of the Market Energy Price and (y) zero dollars ($0.00). Avista shall receive and own all Environmental Attributes associated with Test Energy.

7.4 Payments to Seller. Seller shall prepare and submit to Avista monthly statements during the Term based upon Delivered Facility Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the twentieth (20^{th}) day of the month following the end of the monthly billing period or five (5) days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

7.5 Payments to Avista and Right of Set Off. If Seller is obligated to make any payment or refund to Avista, Seller agrees that Avista may set off such payment or refund amount against any current or future payments due Seller under this Agreement. If Avista does not elect to set off, or if no current or future payment is owed by Avista, Avista shall submit an invoice to Seller for such payments. Seller shall pay Avista no later than the twentieth (20^{th}) day of the month following the end of the monthly billing period or five (5) days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

7.6 Interest. In addition to the remedies set forth in this Agreement, any amounts owing after the due date specified in this Agreement will be subject to interest in the amount of one percent (1%) per month, not to exceed the maximum rate allowed by the law, multiplied by the unpaid balance.

7.7 Wire Transfer. All payments shall be made by wire transfer in accordance with further agreement of the Parties.

7.8 Maintenance of Records. Each Party shall keep complete and accurate records and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates or statements of charges submitted hereunder until the later of (i) a period of at least two (2) years after the date the invoice was received by the other Party, or (ii) if there is a dispute relating to an invoice, the date on which the dispute is resolved.

7.9 Deadline for Auditing Invoice. Each Party shall have two (2) years after the date on which an invoice is received to audit that invoice. The Party performing the audit shall pay the costs of such audit. Any invoice that has not been disputed within such two-year period will be conclusive, final and no longer subject to adjustment.

7.10 Billing Disputes. In the case of a billing dispute, the Party disputing the invoice shall provide the other Party notice of the disputed amount and pay the undisputed portion of such invoice when due; *provided, however*, such payment will not waive such Party's right to dispute the invoice in the future. To resolve any billing dispute, the Parties shall use the procedures set forth in Section 22. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with

late payment interest charges calculated on the amount owed in accordance with the provisions of Section 7.6. If a potential billing error is discovered after a bill has been paid, either Party shall notify the other of such error as soon as reasonably possible, but in any event within the two-year period contemplated by Section 7.9. If either Party overpays a bill through inadvertent errors or otherwise, the overpayment will be returned by the owing Party upon determination of the correct amount, with interest accrued at the rate specified in Section 7.6. If either Party underbills the other Party, the Party issuing the invoice may adjust the error by adding the underbilled amount to a subsequent invoice and such amount will become due and owing within the time allowed on that second invoice without any obligation to pay interest on such amounts if timely paid in accordance therewith.

8. METERING

8.1 Metering if Facility is Interconnected to Avista's Electrical System. Avista shall, at Seller's expense and pursuant to the terms of a separate Interconnection Agreement, install all necessary metering equipment to record and report the Facility's Delivered Facility Output in a manner that will provide Avista with adequate energy measurement data necessary to administer this Agreement and to integrate the Facility's Delivered Facility Output into Avista's electrical system and for the Facility to be integrated in the California Independent System Operator or other energy imbalance market.

8.2 Metering if Facility is Interconnected to an Entity Other Than Avista. Avista shall elect, at Seller's expense and pursuant to the terms of a separate agreement, to install or require Seller to install, all necessary metering equipment to record and report the Facility's Gross Facility Output and Delivered Facility Output in a manner that will provide Avista with adequate energy measurement data necessary to administer this Agreement and to integrate the Facility's Delivered Facility Output into Avista's balancing authority area and into Avista's electrical system.

8.3 Adjustments. Adjustments shall be made for errors in a meter reading or billing discovered within twelve (12) months of the date that such error occurred. Avista shall notify Seller of any errors arising from meter calibration, reading, or billing. Avista shall permit representatives of Seller to inspect Avista's records relating to the delivery of electric power to Avista hereunder.

8.4 Forecasts. Seller shall provide Avista an hourly energy and availability site-specific forecast on a rolling seven day basis updated each hour in graphical and table format. The forecast must be able to be extracted in XML, CSV or equivalent format by Avista with the ability to download past power, weather and accuracy forecast data. The Seller shall either generate the forecast through a professional forecast service or give the Avista access to a professional forecast service with multiple access logins. The forecast provided shall meet generally accepted industry accuracy standards, and for a forecast meeting such standards, Seller shall not be liable to Avista for any difference between forecasted energy and actual energy production. A sample forecast is provided in Exhibit H for illustrative purposes only.

9. INTERCONNECTION AND TRANSMISSION

9.1 Interconnection. Seller shall design, construct, install, own, operate and maintain all Interconnection Facilities so as to allow safe, reliable generation and delivery of electric energy to Avista for the full Term of the Agreement.

9.2 Transmission.

9.2.1 Throughout the Term, Avista shall have sole responsibility for and discretion concerning transmission of Delivered Facility Output from the Point of Delivery.

9.2.2 Transmission. Seller shall procure, at its sole cost, any transmission necessary to deliver Delivered Net Output to the Point of Delivery on a firm basis for the Term of this Agreement. Upon Avista's request, Seller shall provide Avista a copy of the applicable transmission agreement.

10. CURTAILMENT

10.1 Required Curtailment. Avista may curtail, interrupt, reduce or suspend delivery, receipt or acceptance of Delivered Facility Output if Avista in its sole discretion reasonably determines that such curtailment, interruption, reduction or suspension is necessary, consistent with Prudent Utility Practice, and that the failure to do so may:

(a) endanger any person or property, or Avista's electric system, or any electric system with which Avista's system is interconnected;

(b) cause, or contribute to, an imminent significant disruption of reliable electric service to Avista's or another utility's customers;

(c) interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to, Avista's electric system or Avista facilities interconnected with such electric system; or

(d) prevent or interfere with Avista's compliance with any applicable law or regulatory requirement.

For the avoidance of doubt, no payment shall be due Seller for any curtailment under this Section 10.1.

10.2 Notice of Required Curtailment. Avista shall promptly notify Seller of the reasons for any such curtailment, interruption, reduction or suspension provided for in Section 10.1. Avista shall use reasonable efforts to limit the duration of any such curtailment, interruption, reduction or suspension. In order not to interfere unreasonably with Seller operations, Avista shall, to the extent practical, give Seller reasonable prior notice of any curtailment, interruption, or reduction, the reason for its occurrence and its probable duration. Seller understands and agrees that Avista may not be able to provide notice to Seller prior to interruption, curtailment, or reduction of electrical power deliveries to Avista in emergency circumstances, real-time operations of the electric system, and/or unplanned events. Avista

understands and agrees that any shortfall of Delivered Facility Output resulting from damage to the Facility caused by a curtailment under Section 10.1 of this Agreement, where Avista did not provide notice at least thirty (30) minutes prior to such curtailment, shall be deemed Excused Hours and excluded from the calculation of the GME for the relevant Performance Period under Section 6.6.1; *provided* that within one day after such curtailment, Seller shall provide Avista with notice specifying the damage to the Facility caused by the curtailment, the expected length of the outage, and the date when Seller expects that the damaged portion of the Facility will be returned to service. Seller will provide Avista notice that a damaged portion of the Facility has been returned to service no later than one day after any damaged portion of the Facility is returned to service. The date and time of the outage and return to service of an affected generator shall be entered in an availability log by Seller in accordance with 12.1(e). The amount of Delivered Facility Output shortfall that Seller would have generated and delivered to Avista under this Agreement had its generation not been damaged and caused to be unavailable as a result of less than thirty (30) minute notice for a curtailment under Section 10.1 shall be as calculated in Exhibit J for use in the calculation of the GME.

10.3 Discretionary Curtailment. [[*to be negotiated if applicable]]*

10.4 Discretionary Ramp Rate Adjustment Request. At any time Avista may request a "Ramp Rate" limitation beyond those specified in Section 4.4 (a "Discretionary Ramp Rate Adjustment Request"). Any resulting energy losses from such Discretionary Ramp Rate Adjustment Request shall be treated as a Discretionary Curtailment, and Avista shall compensate Seller for the resulting Deemed Facility Output in accordance with Section 10.3.

11. OPERATION & MAINTENANCE

11.1 Facility Operation. Seller shall, at its sole expense, staff, control, and operate the Facility consistent at all times with Prudent Utility Practices, any applicable laws, regulations, orders, permits and licenses, now or hereafter in effect, and any operating procedures developed pursuant to Section 11.3. Personnel capable of starting, operating, and stopping the Facility shall be continuously available, either at the Facility, or capable of remotely starting, operating, and stopping the Facility within ten (10) minutes and capable of being at the Facility no more than ninety (90) minutes after notice. In all cases personnel capable of starting, operating and stopping the Facility shall be continuously reachable by phone, pager or other electronic means.

11.2 Outage and Performance Reporting. Seller shall comply with all Avista, NERC, WECC and other applicable generating unit outage reporting requirements, as they may be revised from time to time, and as they apply to the Facility.

11.2.1 Forced Outages. When Forced Outages occur, Seller shall notify Avista of the existence, nature, and expected duration of the Forced Outage as soon as practical, but in no event later than one hour after the Forced Outage occurs. Seller shall immediately inform Avista of changes in the expected duration of the Forced Outage unless relieved of this obligation by Avista for the duration of each Forced Outage. Seller shall take all reasonable

measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such Forced Outages.

11.3 Communications and Reporting. Avista and the Seller shall maintain appropriate operating communications through the Communicating and Reporting Guidelines specified in Exhibit E.

11.4 Scheduled Outage. On or before December 15 prior to each calendar year, Seller shall submit a written proposal of Scheduled Outages for the upcoming calendar year. Such written proposal of Scheduled Outages shall contain the number of hours in each calendar month where the Facility is expected to be on Scheduled Outage. Seller may update the annual Scheduled Outages proposal periodically; *provided, however*, that Seller shall not change Scheduled Outages for the current or following two (2) calendar months without the written consent of Avista. Avista and Seller shall mutually agree as to the acceptability of the proposal and any updates or changes to the proposal. The Parties' determination as to the acceptability of Seller's timetable for Scheduled Outages shall take into consideration Prudent Utility Practices, Avista's system requirements, and Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed Scheduled Outages. The Parties shall cooperate in determining mutually acceptable times for Scheduled Outages.

12. ACCESS TO DATA

12.1 Data to be Provided by Seller. Commencing on the first date on which the Facility generates electrical power and continuing throughout the Term, Seller shall provide to Avista, in a form reasonably acceptable to Avista, the following data on a real-time basis and/or, if applicable, historical basis:

(a) access to meteorological measurements, any other facility availability information, and all parameters necessary for use in the equation under item (d) of this list;

(b) access to Facility meter, Point of Delivery meter, and all real-time SCADA data including but not limited to unit level SCADA data at the Site;

(c) ten-minute and hourly time-averaged measurements for the following parameters: air temperature, wind speed, wind direction, and barometric pressure;

(d) an equation or algorithm, updated on an ongoing basis to reflect the potential generation of the Facility as a function of wind speed. Such equation shall take into account the expected availability of the Facility and losses to the Point of Interconnection; and

(e) data records of the hourly availability of each generator unit, to be provided monthly to Avista in electronic spreadsheet form.

Avista may disclose publicly the data provided by Seller pursuant to this Section 12.1 if required by law, regulation, or regulatory authority with competent jurisdiction.

12.1.1 Notice of Deficiency in Data. Avista will exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 12.1; *provided* that any failure by Avista to provide such deficiency notice shall not result in any additional liability to Avista under this Agreement.

12.1.2 Validation of Data. Avista reserves the right to validate the data provided pursuant to this Section 12.1 with information publicly available, including without limitation from National Oceanic and Atmospheric Administration or its successor and nearby weather stations, and substitute such data for its settlement purposes if Seller's data is inconsistent with the publicly available data or is missing.

12.1.3 Retention of Data. Seller shall maintain at least a minimum of two (2) years of historical data for all data required pursuant to this Section 12.1, which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten minute basis. Seller shall provide such data to Avista within five (5) Business Days of Avista's request.

12.2 Meteorological Station. Seller, at its own expense, shall install and maintain an adequate number (and at least one permanent stand-alone) meteorological station at the Site to monitor and report the meteorological data required in Section 12.1 of this Agreement. The number, locations and type of such stations shall comport with industry standards.

12.2.1 Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Avista. Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Avista as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

12.2.2 If Avista notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within fifteen (15) days of receipt of such notice.

12.2.3 For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Avista notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Avista through any alternate means of communication (i.e., cellular communications from onsite personnel, facsimile, smart-phone or equivalent mobile e-mail) until the telecommunications link is re-established.

Seller acknowledges that Avista may provide such meteorological data to third-parties for wind forecasting and other services as necessary.

12.2.4 Seller agrees and acknowledges that Avista may seek from third parties any relevant information, including from the Transmitting Entity. Seller hereby voluntarily consents to allow the Transmitting Entity to share Seller's information with Avista, and agrees to provide the Transmitting Entity with written confirmation of such voluntary consent at least thirty (30) days prior to delivery of any Delivered Facility Output under this Agreement.

12.3 Communications. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Avista with access to the data required in this Section 12 of this Agreement.

13. SELLER'S OBLIGATIONS; RIGHT TO INSPECT

13.1 Seller's Risk. Seller shall design, construct, own, operate and maintain the Facility at its own risk and expense.

13.2 Seller Obligations in Accordance with Prudent Utility Practices. Seller shall design, construct, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow reliable generation of Total Output and delivery of Delivered Facility Output to Avista for the full Delivery Term, in accordance with Prudent Utility Practices and all applicable laws, regulations (including without limitation any NERC or WECC reliability standards), orders, permits and licenses, now or hereafter in effect, of any governmental authority.

13.3 Avista's Right to Access and Inspection. Avista shall at all reasonable times, including weekends and nights, and with reasonable prior notice, have access to the Facility for any purpose related to the performance of this Agreement. Seller shall permit Avista to inspect and audit the Facility, any related production, delivery and scheduling documentation or the operation, use or maintenance of the Facility at any reasonable time and upon reasonable notice. Seller shall provide Avista reasonable advance notice of any Facility test or inspection performed by or at the direction of Seller.

13.4 Decommissioning and Other Costs. Avista shall not be responsible for any costs of decommissioning or demolition of the Facility or any environmental liability associated with the construction, operation, or decommission thereof without regard to the timing or the cause of such decommissioning or demolition.

13.5 Licenses and Permits. During the Term of this Agreement, Seller shall maintain compliance with all permits and licenses described in Section 5.1.4 of this Agreement. In addition, Seller will obtain, and supply Avista with copies of, any new or additional permits or licenses that may be required for Seller's operations. At least every fifth (5^{th}) year after the Commercial Operation Date, or the Initial Delivery Date, as applicable, Seller will update the documentation described in Section 5.1.4.

13.6 Notice of Default. During the Term of this Agreement, Seller shall supply Avista, within five (5) Business Days of receipt by Seller, with copies of any notice of default provided to Seller from any counterparty under any Leases, turbine supply contract, balance of plant construction contract or contract for the operation or maintenance of the Facility, and Seller shall keep Avista informed of Seller's efforts to cure or dispute any such notice of default.

14. ENVIRONMENTAL ATTRIBUTES

14.1 Avista to Own All Environmental Attributes. The Parties agree that the price paid by Avista for Delivered Facility Output pursuant to Sections 7.2 and 7.3 of this Agreement includes compensation for all Environmental Attributes associated with the Facility and that, to the full extent allowed by applicable laws or regulations, Avista shall own or be entitled to claim all Environmental Attributes associated with the Facility. To the extent necessary, Seller shall assign to Avista all rights, title and authority necessary for Avista to register, own, hold and manage such Environmental Attributes in Avista's own name and to Avista's account, including any rights associated with WREGIS (or any other renewable energy information or tracking system that may be established) with regard to monitoring, tracking, certifying, or trading such Environmental Attributes. The Environmental Attributes to be transferred to Avista hereunder will be sourced from the Facility. Seller shall take all reasonable steps, at Seller's expense, required to obtain and maintain tradable renewable certification, including Green-e, California Energy Commission, or other similar certification for the Facility and/or the Gross Facility Output.

14.2 Transfers. Seller shall transfer all Environmental Attributes generated or otherwise created by the Facility to Avista on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Seller shall comply with all laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such Environmental Attributes to Avista and Avista shall be given sole title to all such Environmental Attributes. Seller warrants that upon delivery to Avista, the Environmental Attributes will be free and clear of all liens, security interests, claims and encumbrances. Upon request of Avista, Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that Environmental Attributes associated with the Facility are issued and tracked for purposes of satisfying state renewable portfolio standard requirements, including Washington State's Energy Independence Act requirements, and are transferred in a timely manner to Avista for Avista's sole benefit.

14.3 Changes to WREGIS. If the WREGIS Operating Rules are changed or replaced after the Effective Date, WREGIS applies the WREGIS Operating Rules in a manner inconsistent with this Section 14 after the Effective Date, or WREGIS is eliminated or replaced, the Parties promptly shall modify this Section 14 as reasonably required to cause and enable Seller to transfer to Avista all Environmental Attributes associated with the Facility to Avista, including but not limited to those modifications reasonably required to cause and enable Seller to transfer to Avista's WREGIS Account the Environmental Attributes that are required to be transferred to Avista for each given calendar month under this Agreement.

15. INDEMNITY; RELEASES

15.1 Indemnity by Seller. Seller shall release, defend, indemnify and hold harmless Avista or Avista's respective directors, officers, agents, and representatives from and against any and all third-party claims, demands, causes of action, judgments, liabilities and any associated costs and expenses, including reasonable attorney's fees, ("Claims") arising out of or in any way connected with (i) the Total Output associated with the Facility under this Agreement (including any Environmental Attributes) up to the Point of Delivery, (ii) Seller's operation and/or maintenance of the Facility or any other Seller-owned equipment (including any Seller-owned Interconnection Facilities), or (iii) Seller's actions or inactions with respect to this Agreement, including but not limited to any Claims on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property, excepting only such Claims as may be caused solely by the gross negligence or willful misconduct of Avista or Avista's directors, officers, agents, or representatives.

15.2 Indemnity by Avista. Avista shall release, defend, indemnify and hold harmless Seller or Seller's respective directors, officers, agents, and representatives from and against any and all Claims arising out of or in any way connected with (i) the Delivered Facility Output delivered by Seller under this Agreement after the Point of Delivery, or (ii) Avista's actions or inactions with respect to this Agreement, including but not limited to any Claims on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property, excepting only such Claims as may be caused solely by the gross negligence or willful misconduct of Seller or Seller's directors, officers, agents, or representatives.

15.3 SELLER AND AVISTA SPECIFICALLY WARRANT THAT THE TERMS AND CONDITIONS OF THE FOREGOING INDEMNITY PROVISIONS ARE THE SUBJECT OF MUTUAL NEGOTIATION BY THE PARTIES, AND ARE SPECIFICALLY AND EXPRESSLY AGREED TO IN CONSIDERATION OF THE MUTUAL BENEFITS DERIVED UNDER THE TERMS OF THE AGREEMENT.

15.4 TO THE EXTENT PERMITTED BY APPLICABLE LAW, SELLER AND AVISTA EACH WAIVE WITH RESPECT TO THE OTHER ANY IMMUNITY UNDER EXISTING WORKER'S COMPENSATION LAW APPLICABLE TO THE JURISDICTION WHERE THE PROJECT IS TO BE LOCATED AS NECESSARY TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER FROM SUCH LOSS, TO THE EXTENT SET FORTH IN THIS SECTION 15.

15.5 Releases by Seller. In addition to and without limiting the generality of Section 15.1, Seller releases Avista from any and all claims, losses, harm, liabilities, damages, costs and expenses to the extent resulting from any:

(a) Electric disturbance or fluctuation that migrates, directly or indirectly, from Avista's electric system to the Facility notwithstanding Avista's compliance with applicable laws, regulations, Transmitting Entity requirements and Prudent Utility Practice;

(b) Interruption, suspension or curtailment of electric service to the Facility, to the extent such interruption, suspension or curtailment is caused or contributed to by the Facility or the interconnection of the Facility with any electric system;

(c) Except for the consideration and remedies expressly provided in Sections 10.3 and 10.4, disconnection, interruption, suspension or curtailment by Avista pursuant to terms of this Agreement or the Interconnection Agreement(s); or

(d) Disconnection, interruption, suspension or curtailment of transmission service, or unforeseen cost or increase in cost imposed by a Transmitting Entity.

16. INSURANCE REQUIREMENTS

16.1 Insurance. Prior to constructing or operating the Facility, Seller, at its own cost, shall obtain and maintain the following insurance in force over the Term of this Agreement and shall provide certificates of all insurance policies. All insurance policies required to fulfill the requirements of this Section 16 shall include language requiring that any notice of cancellation or notice of change in policy terms be sent to Avista by the insurance carrier(s) at least sixty (60) days prior to any change or termination of the policies.

16.1.1 General Liability. Seller shall carry commercial general liability insurance for bodily injury and property damage with a minimum limit equal to $2,000,000 (United States dollars) for each occurrence. The deductible shall not exceed the Seller's financial ability to cover claims and shall not be greater than prevailing practices for similar operations in the state in which the Facility is located. Excess general liability with a minimum limit of $25 million.

16.1.2 Property. Seller shall carry all-risk property insurance for repair or replacement of the Facility. The limit of property insurance shall be sufficient to restore operations in the event of reasonably foreseeable losses from natural, operational, mechanical and human-caused perils. The deductible shall not exceed the Seller's financial ability to fund the cost of losses and shall not be greater than prevailing practices for similar operations in the state in which the Facility is located.

16.1.3 Qualifying Insurance. The insurance coverage required by this Section 16 shall be obtained from an insurance company reasonably acceptable to Avista and shall include an endorsement naming Avista as an additional insured and loss payee as applicable.

16.1.4 Notice of Loss or Lapse of Insurance by Seller. If the insurance coverage required by this Section 16 is lost or lapses for any reason, Seller will immediately notify Avista in writing of such loss or lapse. Such notice shall advise Avista of (i) the reason for such loss or lapse and (ii) the steps Seller is taking to replace or reinstate coverage. Notice provided by the insurer required by Section 16.1 shall not satisfy the notice requirement of this Section 16 and Seller's failure to provide the notice required by this Section 16 and/or to

promptly replace or reinstate coverage will constitute a material breach of this Agreement.

16.2 Continuing Obligations. For the Term of this Agreement, Seller will provide Avista with the following:

16.2.1 Insurance. Upon Avista's request, Seller shall provide Avista evidence of compliance with the provisions of Section 16.1. If Seller fails to comply, such failure will be a material breach and may only be cured by Seller promptly supplying evidence that the required insurance coverage has been replaced or reinstated.

16.2.2 Certification of Ongoing Operations. Every three (3) years after the Commercial Operation Date, Seller will supply Avista with a Certification of Operations and Maintenance Policy from a registered professional engineer licensed in the state in which the Facility is located, which certification shall be in the form acceptable to Avista. Seller's failure to supply the certificate required by this Section 16 will be a material breach that may only be cured by Seller promptly providing the required certificate. A form of Certification of Operations and Maintenance Policy is attached hereto as Exhibit G.

17. SECURITY OF PERFORMANCE

17.1 Credit Support Security. Avista requires Seller to post Credit Support Security in the amount(s) outlined below:

17.1.1 Delay Security. Seller, or its Affiliate, shall post "Delay Security," in accordance with Section 5.3.5, in the form of Cash, Letter of Credit, Guaranty, or other form of Credit Support Security acceptable to Avista. Delay Security shall be equal to XX United States dollars ($XX.00) multiplied by the Expected Capacity with the Expected Capacity being measured in kilowatts. Delay Security shall be posted on or before the Effective Date of this Agreement. If Delay Security is posted in the form of a Letter of Credit, such Delay Security shall be posted substantially in the form of Exhibit N attached hereto.

17.1.2 Operating Security. Seller shall post "Operating Security" (separate from Delay Security) of [[INSERT]] United States dollars ($_____) in the form of Cash, Letter of Credit, Guaranty, or other form of Credit Support Security acceptable to Avista. Operating Security shall be posted prior to Commercial Operation and shall be renewed in one year increments such that it is continuous over the remaining Term of the Agreement. If on or following the sixtieth (60^{th}) day prior to the expiration date of such Letter of Credit, Avista has not received from the issuing bank an amendment renewing the Letter of Credit for a subsequent year, or has not been provided a replacement Letter of Credit from a Qualified Institution in substantially the same form as the existing

Letter of Credit, Avista will be permitted to draw on the Letter of Credit up to the face amount of the Letter of Credit in accordance with the terms and conditions of such Letter of Credit. Operating Security shall be posted before the Commercial Operation Date of this Agreement. If Operating Security is posted in the form of a Letter of Credit, such Operating Security shall be posted substantially in the form of Exhibit O attached hereto.

17.2 Letters of Credit.

17.2.1 Letter of Credit Default. Upon the occurrence of a Letter of Credit Default, Seller agrees to deliver a substitute Letter of Credit or other Credit Support Security (in a form acceptable to Avista) to Avista in an amount at least equal to that of the Letter of Credit to be replaced on or before the second (2^{nd}) Business Day after written demand by Avista.

17.2.2 Costs. In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorney's fees of Avista) of establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Seller.

17.3 Security Interest in Cash. Seller grants to Avista a present and continuing, first priority security interest in and to, and a general first lien on any Cash that is posted to Avista in the form of Credit Support Security. Seller agrees to take such action as Avista reasonably requests in order to perfect Avista's present and continuing, first priority security interest in and lien on such Cash and grants authority to Avista to file financing statements or take such other actions necessary to perfect the foregoing interests.

17.4 Use of Credit Support Security to Pay Amounts Due to Avista. If Seller fails to pay any amount due to Avista within the time provided for payment hereunder, Avista shall be entitled to draw upon the Credit Support Security. Avista shall also be entitled to draw upon the Credit Support Security for damages arising under the Agreement, without regard to whether Avista exercises any right to terminate the Agreement.

17.5 Annual Financial Statements; Annual Certification. Within 120 days after its fiscal year-end, Seller shall provide Avista with copies of Seller's most recent fiscal year-end audited annual financial statements. With respect to the first, second and third quarters of each fiscal year, upon request Seller shall provide Avista the most recent, unaudited quarterly financial statements within sixty (60) days. An authorized officer of Seller shall, within thirty (30) days of the first day of each Commercial Operation Year, provide Avista with a certification that Seller is in compliance with all requirements of, and qualifies as, a Special Purpose Entity.

17.6 Operating Security is Not a Limit on Seller's Liability. The Operating Security constitutes security for, but is not a limitation of, Seller's obligations hereunder, and shall not be Avista's exclusive remedy for Seller's failure to perform its post-Commercial Operation Date obligations in accordance with this Agreement.

18. DEFAULT AND TERMINATION

18.1 Each of the following events shall constitute a "Default":

(a) Abandonment of the Facility by Seller;

(b) A Party becomes insolvent (a Party shall be deemed to be insolvent if it is unable to meet its obligations as they become due or if its liabilities exceed its assets);

(c) A Party makes a general assignment of substantially all of its assets for the benefit of its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any applicable insolvency laws;

(d) A Party has filed against it a petition for bankruptcy, reorganization or other relief under any applicable insolvency laws and such petition is not dismissed or stayed within sixty (60) days after it is filed;

(e) Seller fails to pay the undisputed portion of any GME Damages in the time period set forth in Section 6.6.3;

(f) Seller fails to comply with any of the requirements in Section 17, including failure to deliver and maintain any Credit Support Security as required by Section 17 hereof, and such failure continues for more than five (5) Business Days after written notice of such failure from Avista or, in the event of Letter of Credit Default under Sections 1.59(a) or 1.59(e), ten (10) Business Days after written notice from Avista;

(g) Seller's failure at any time to comply with the requirements of, and qualify as, a Special Purpose Entity, and such failure is not cured within sixty (60) days after written notice of such failure from Avista;

(h) A Party's failure to make any payment required by this Agreement when due;

(i) A Party's failure to provide annual audited financial statements, as outlined in Section 17.5 and such failure continues for more than sixty (60) days after written notice of such failure from Avista; or

(j) Any material breach of a Party's obligations under this Agreement not otherwise set forth in this Section 18.1.

The Party in Default under this Agreement shall be referred to as the "Defaulting Party," and the other Party will be referred to as the "Non-Defaulting Party."

18.2 Notice and Opportunity to Cure. In the event of a Default, the Non-Defaulting Party shall give written notice to the Defaulting Party of a Default. Except where a different cure period is expressly provided in any Section of this Agreement, including but not limited to Sections 18.1(d), 18.1(f), and 18.1(i), if the Defaulting Party has not cured the breach

within thirty (30) days after receipt of such written notice, which cure period shall be extended for an additional fifteen (15) days if the Defaulting Party so long as the Defaulting Party is using its diligent efforts to cure such Default, the Non-Defaulting Party may, at its option, terminate this Agreement and/or, subject to Sections 18.3 and 18.4 of this Agreement, pursue any remedy available to it in law or equity; *provided* that, if a Default occurs under Sections 5.3.4, 18.1(a), 18.1(b), 18.1(c), 18.1(e), or 18.1(f), or a Default occurs under Section 18.1(g) that is not susceptible to cure, the Non-Defaulting Party may immediately terminate this Agreement without opportunity to cure, and such termination shall become effective upon written notice of termination provided to the Defaulting Party.

18.3 Closeout and Other Setoffs. Notwithstanding any contrary provisions of this Agreement, the Non-Defaulting Party will be entitled to recover from the Defaulting Party, upon termination of this Agreement, all costs reasonably incurred by the Non-Defaulting Party in closing out forward positions and similar transactions entered into in connection with this Agreement before the termination of this Agreement, including but not limited to damages incurred by the Non-Defaulting Party in closing out mark-to-market arrangements, and costs incurred by the Non-Defaulting Party, based upon the positive difference between the market price for electric power and Environmental Attributes of a similar quality and quantity at the time of Default plus all associated transmission costs to deliver or to acquire such replacement electrical power and Environmental Attributes, and the price for Delivered Facility Output established by this Agreement. Such costs will be considered a payment owing to the Non-Defaulting Party pursuant to this Section 18.3. The Non-Defaulting Party will be entitled, in its sole discretion, to set off any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under this Agreement. The right of setoff provided in the prior sentence will not be the exclusive right of set off under this Agreement, and each Party retains all other rights of setoff, offset and recoupment otherwise available to it.

18.4 Damages. If this Agreement is terminated as a result of any event of Default, the Non-Defaulting Party shall be entitled to exercise any rights and remedies provided for herein, or otherwise available at law or equity.

18.5 Specific Performance and Injunctive Relief. In accordance with Section 22.1, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties agree that specific performance is proper in the event of any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance agree that all expenses incurred by the substantially prevailing Party in such proceeding, including reasonable attorneys' fees at trial and upon appeal, shall be awarded to the substantially prevailing Party in such proceeding.

18.6 Additional Rights and Remedies. Any right or remedy afforded to either Party under this Agreement on account of a Default by the other Party is in addition to, and not in lieu of, all other rights or remedies available to such Party under any other provisions of this Agreement, by law or otherwise on account of the Default.

18.7 Limitation of Liability.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT OR TORT, RESULTING FROM EITHER PARTY'S PERFORMANCE OR NON-PERFORMANCE OF AN OBLIGATION IMPOSED ON IT BY THIS AGREEMENT, WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY. The Parties expressly acknowledge and agree that this limitation will not be deemed to apply to (i) tax benefits to which the Non-Defaulting Party would be entitled but for the Defaulting Party's breach of this Agreement and (ii) any Claim for indemnification under Section 15 of this Agreement to the extent that the loss suffered by the indemnified Party as a result of such Claim includes an element of damages otherwise excluded under this Section 18.7. The provisions of this Section 18.7 will survive the termination or expiration of this Agreement.

19. FORCE MAJEURE

19.1 Force Majeure. As used in this Agreement, "Force Majeure" means any cause beyond the reasonable control of the Seller or Avista which, despite the exercise of reasonable due diligence, such party is unable to prevent or overcome. Neither Party shall be liable to the other Party, or be considered to be in breach of or Default under this Agreement, for delay in performance due to an event of Force Majeure, including but not limited to:

fire, flood, earthquake, tornado, volcanic activity; court order; act of civil, military or governmental authority; strike, lockout and other labor dispute; riot, insurrection, sabotage or war; unanticipated electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected; and serial defects in wind turbine equipment resulting in a prolonged outage based on maintenance protocols as directed by the manufacturer; *provided*, that notwithstanding anything to the contrary in this Agreement, none of the following shall constitute Force Majeure: (i) changes in weather conditions that do not cause substantial physical damage to the Facility and that prevent the operation of all or part of the Facility, including changes in wind speed or other wind conditions, (ii) equipment or mechanical breakdowns or failures of the Facility shall not constitute Force Majeure, unless such equipment or mechanical breakdowns or failures are caused by an event that is itself Force Majeure, or (iii) failure or inability to make a payment.

19.2 In the event of a Force Majeure event, the time for performance shall be extended by a period of time reasonably necessary to overcome such delay. For the avoidance of doubt, Avista shall not be required to pay for any of the Total Output which, as a result of any Force Majeure event, is not delivered.

19.3 Nothing contained in this Section 19 shall require any Party to settle any strike, lockout or other labor dispute.

19.4 In the event of a Force Majeure event, the delayed Party shall provide the other Party notice by telephone or email as soon as reasonably practicable and written notice within fourteen (14) days after the occurrence of the Force Majeure event. Such notice shall include the particulars of the occurrence. The suspension of performance shall be of no

greater scope and no longer duration than is required by the Force Majeure and the delayed Party shall use its best efforts to remedy its inability to perform.

19.5 Force Majeure shall include any unforeseen electrical disturbance beyond the reasonable control of the Party claiming Force Majeure that prevents any electric energy deliveries from occurring at the Point of Delivery.

20. RIGHT OF OFFER

Avista shall have the right to participate in and to make purchase offers pursuant to any process conducted by Seller or an Affiliate of Seller for the sale of the Facility or of Seller. Prior to the commencement of any such sale process, Seller shall notify Avista in writing regarding the date such sale process will commence and the method by which bidders, including Avista if Avista wishes to participate, may respond. Avista acknowledges that this provision shall be of no effect on a sale of the Facility or of Seller occurring after and as a result of a foreclosure by a Facility Lender.

21. ASSIGNMENT; CHANGE OF CONTROL

21.1 No Assignment Without Consent. Except as permitted in this Section 21, neither Party shall assign this Agreement or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided* that (i) at least thirty (30) days prior notice of any such assignment shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations hereunder, (iii) no assignment shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, except as otherwise provided in Section 21.1.2 below; (iv) no assignment shall impair any security given by Seller hereunder; and (v) before the Agreement is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable regulatory bodies, and *provided further* that, with respect to an assignment by Avista to an Affiliate, such Affiliate shall have the same or better Credit Rating as Avista at the time of the assignment, such assignee agrees in writing to assume and be bound by all of the obligations of Avista under this Agreement, and such assignee is otherwise capable of performing its obligations under this Agreement.

21.1.1 Seller's consent shall not be required for Avista to assign this Agreement to an entity (i) into which Avista is merged or consolidated or (ii) that Avista sells, transfers, or assigns all or substantially all of its assets, so long as the survivor of any such merger or consolidation or the purchaser, transferee, or assignee of such assets agrees in writing to assume and be bound by all of the obligations of Avista under this Agreement.

21.1.2 In the event that a permitted assignee of Avista has or attains an investment grade unsecured bond rating and is otherwise capable of performing Avista's obligations under this Agreement, Seller shall release Avista from its obligations under this Agreement if Avista requests to be so released by notice to Seller.

21.1.3 Avista's consent shall not be required for Seller to assign this Agreement for collateral purposes to a Facility Lender. Seller shall notify Avista of any such assignment to the Facility Lender no later than thirty (30) days after the assignment.

21.2 Accommodation of Facility Lender. To facilitate Seller's obtaining of financing to construct and operate the Facility, Avista shall provide such consents to collateral assignment, certifications, representations, information, estoppels certificates, legal opinions or other documents as may be reasonably requested by Seller or the Facility Lender in connection with the financing of the Facility (generally, a "Lender Consent"). The Lender Consent shall be in a form reasonably acceptable to Avista and shall include Facility Lender's rights to be provided advance notice of, and to be allowed within a reasonable and customary time period to exercise step-in rights or otherwise cure, any breach or default of this Agreement by Seller, and such other terms as the Facility Lender may reasonably request that do not materially adversely affect any of Avista's rights, benefits, risks and/or obligations under this Agreement. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Avista for the incremental direct expenses (including the reasonable attorney fees (not to exceed $25,000 per financing) and expenses) incurred by Avista in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the Facility Lender, and provided by Avista, pursuant to this Section 21.

21.3 Change of Control. Any direct change of control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Avista, which shall not be unreasonably withheld. No consent of Avista shall be required, however, to any change of control resulting from (i) any exercise by the Facility Lender of its rights and remedies under the Financing Documents or (ii) the sale of the equity interests in Seller to an Affiliate of Seller in connection with any tax equity financing. Seller shall provide Avista notice of any indirect change of control of Seller, whether voluntary or by operation of law, within five (5) Business Days of such change of control.

21.4 Notice of Facility Lender Action. Within ten (10) days following Seller's receipt of each written notice from the Facility Lender of default or Facility Lender's intent to exercise any remedies under the Financing Documents Seller shall deliver a copy of such notice to Avista.

21.5 Transfer Without Consent is Null and Void. Any change of control or sale, transfer, or assignment of any interest in the Facility or in this Agreement made without fulfilling the requirements of this Agreement shall be null and void and shall constitute an event of Default pursuant to Section 18.

22. DISPUTE RESOLUTION

22.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Section 22. The lone exception to the foregoing is that either Party may seek an injunction in any court of competent jurisdiction if such action is

necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the Dispute by means of this procedure.

22.2 Management Negotiations. The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement (a "Dispute") by prompt negotiations between authorized representatives of each Party. Either Party may request in writing a meeting (to be held in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Parties shall refer the matter to the designated senior officials of their respective companies, who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written notice confirming the referral and identifying the name and title of the senior official who will represent the Party.

22.2.1 Within five (5) Business Days of the Referral Date, the senior officials of the Parties shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from the Referral Date. After the initial meeting date, the senior officials of the Parties shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

22.2.2 All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and, except to the extent required by law or regulatory agency of competent jurisdiction, shall not be disclosed to any third party without the disclosing Party's consent (such consent shall not be unreasonably withheld). All such communication and writings shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this Dispute or any other.

22.2.3 If the matter is not resolved within forty-five (45) days of the Referral Date, or if a Party refuses or does not meet as required in this Section 22.2, either Party may initiate binding arbitration of the Dispute according to the terms of the following Section 22.3.

22.3 Arbitration. If the Parties cannot resolve any Dispute in accordance through negotiations under Section 22.2, either Party may initiate binding arbitration by providing written notice to the other Party of the Party's intent to initiate binding arbitration under this Section 22.3. Any arbitration under this Section 22.3 shall take place in Spokane, Washington, unless another location is otherwise mutually agreed to by the Parties. Except as expressly provided in this Section 22, arbitration shall be conducted pursuant to the Washington Arbitration Act, RCW Chapter 7.04A or such other procedures mutually agreed to by the Parties.

22.3.1 Selection of Arbitrator(s). The Parties shall endeavor to select a mutually acceptable arbitrator. If the Parties cannot mutually

agree on a single arbitrator to adjudicate the Dispute, then the Dispute will be adjudicated by a panel of three (3) arbitrators. The panel of arbitrators shall consist of one arbitrator selected by each Party and those two (2) arbitrators shall select the third member of the arbitration panel. Any arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute.

22.3.2 Discovery. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the arbitration hearing, except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown. Except as specifically provided in this Section 22, all discovery of the Parties shall be conducted pursuant to the Federal Rules of Civil Procedure.

22.3.3 Motions. The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.

22.3.4 Arbitration Award. The arbitrator's award shall be made within nine (9) months of the date of the notice of intention to arbitrate and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The arbitrator's award shall be consistent with this Agreement. In no event shall the arbitrator have any authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

22.3.5 Confidentiality of Arbitration. Except as may be required by law or by request of a regulatory agency of competent jurisdiction over either Party, neither a Party nor an arbitrator may disclose to third parties other than Facility Lender(s) the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.

22.3.6 Costs of Arbitration; Attorney Fees. Except as otherwise provided in this Section 22, each Party will be responsible for its own costs of participating in any arbitration under this Section 22 and all joint costs of arbitration will be shared equally by the Parties. Notwithstanding the foregoing the substantially prevailing Party in any arbitration under this Section 22 will be

entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which such Party may be entitled.

23. CONFIDENTIALITY

23.1 Certain Definitions. For purposes of this Section 23, "Proprietary Information" means: (i) all written, recorded or oral information furnished to a Party ("Recipient") by the other Party or on behalf of the other Party by its Affiliate ("Disclosing Party"), furnished before, on or after the Effective Date and labeled or designated "confidential," together with all copies, reproductions, summaries, analyses or extracts thereof or based thereon in the possession of Recipient or in the possession of any of Recipient's agents or representatives, (ii) the nature and content of the discussions regarding this Agreement, and (iii) this Agreement (including but not limited to the price(s) stated in this Agreement). Proprietary Information does not, however, include information that: (a) is or becomes generally available to the public other than as a result of a disclosure by Recipient or Recipient's agents or representatives in violation of this Section 23, (b) was available to Recipient in prior written documents on a nonconfidential basis prior to its disclosure by the Disclosing Party, (c) becomes available to Recipient on a nonconfidential basis from a Person who is not otherwise bound by a confidentiality agreement with the Disclosing Party or is not otherwise prohibited from transmitting the information to Recipient, (d) any information which must be disclosed under applicable law, including disclosures required under securities laws, disclosures to the transmission function of a Party or its Affiliates as part of any transmission request or information exchange that is required to be made public pursuant to FERC rules and regulations, or otherwise.

23.2 Confidentiality Covenant. During the Term and for two (2) years after the Term ends, each Recipient shall to the extent allowed by law, keep Proprietary Information confidential. If a Recipient is required by applicable law to disclose any such information, it shall provide the Disclosing Party with prompt notice of the request or requirement so that the Disclosing Party may, in its sole judgment, either (a) seek an appropriate protective order or other remedy at its sole cost and expense or (b) consult with the Recipient concerning steps to resist or narrow the scope of such request or requirement. If Recipient is compelled to disclose Proprietary Information, it shall disclose only such information as it is compelled to disclose and shall use its reasonable efforts to obtain confidential treatment for such information consistent with how the Recipient would treat its own confidential information. Seller may disclose Proprietary Information to (x) a lender or investor (including professional advisors) to the extent reasonably necessary to facilitate the evaluation of this Agreement as part of an investment or lending transaction, and (y) a contractor or equipment supplier (including professional advisors) evaluating or engaged in construction of or supply of equipment to the Facility, but in each case only if such investor, lender, contractor or supplier has agreed in writing to keep the Proprietary Information confidential. Nothing in this Section 23 is intended to preclude a Party from providing Proprietary Information requested by applicable regulatory agencies, including but not limited to, the Securities and Exchange Commission, FERC, any state public utilities commission or other similar agencies; *provided* that the Recipient otherwise complies with the provisions of this Section 23. Avista may disclose Proprietary Information to the Federal Energy Regulatory Commission, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon, the Idaho Public Utility

Commission and the public utility commissions of any other state or any other regulatory authority having jurisdiction over Avista to the extent reasonably necessary to facilitate the evaluation of this Agreement for ratemaking approval purposes.

24. MISCELLANEOUS

24.1 Several Obligations. The duties, obligations and liabilities of the Parties under this Agreement are intended to be several not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties. Each Party shall be individually and severally liable for its own obligations under this Agreement. Further, neither Party shall have any rights, power or authority to enter into any agreement or undertaking for or on behalf of, to act as to be an agent or representative of, or to otherwise bind the other Party.

24.2 Subcontracting. Seller may subcontract its duties or obligations under this Agreement without the prior written consent of Avista; *provided, however*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

24.3 Non-Waiver. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such Party's right to assert or rely upon any such provision or right in that or any subsequent instance; rather, the same shall be and remain in full force and effect.

24.4 Jointly Negotiated and Prepared. This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

24.5 Amendment. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

24.6 Choice of Law; Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington without reference to its choice of law provisions. Venue for any litigation arising out of or related to this Agreement shall lie in the courts of the State of Washington.

24.7 Waiver of Jury Trial. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

24.8 Headings. The Section headings in this Agreement are for convenience only and shall not be considered part of or used in the interpretation of this Agreement.

24.9 Severability. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement will remain in effect; *provided, however*, that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties.

24.10 Taxes. As between Seller and Avista, Seller shall be solely responsible for (i) 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 Facility, or any components or appurtenances thereof, and (ii) all ad valorem taxes relating to the Facility. All electric energy delivered by Seller to Avista hereunder shall be sales for resale, with Avista reselling such electric energy. Avista shall obtain and provide Seller with any certificates required by any governmental authority, or otherwise reasonably requested by Seller to evidence that the deliveries of electric energy hereunder are sales for resale. Avista shall be solely responsible for all present or future taxes and other impositions of governmental authorities relating to the sales and use of energy after the Point of Delivery.

24.11 Notices. Unless otherwise specified, all notices or other communications required by or provided under this Agreement shall be in writing and shall be mailed, sent by facsimile, or delivered in person to the following addresses, and shall be considered delivered when deposited in the US Mail, postage prepaid, by certified or registered mail, sent by facsimile, or delivered in person:

to Avista:	Director, Power Supply Avista Corporation 1411 E Mission Ave P.O. Box 3727 Spokane, WA 99220 Facsimile: (509) 495-4272
to Seller:	[[INSERT]]

Either Party may change its designated representative to receive notice and/or address specified above by giving the other Party written notice of such change.

24.12 Liquidated Damages. With respect to any provisions herein providing for the payment of liquidated damages by one Party to the other Party, the Parties acknowledge and agree that it is extremely impractical and difficult to assess actual damages in the event that a Party fails to perform under such provisions, and the Parties therefore agree that each method of calculating liquidated damages as provided in such provisions is a fair and reasonable calculation of actual damages to the other Party in the event that such Party fails to perform under such provisions.

24.13 Further Assurances. The Parties shall each do and shall perform all such acts and things and shall execute all such deeds, documents and writings and shall give all such further assurances as may be necessary to carry out the intent of this Agreement. In particular, without limitation (i) each Party shall cooperate in good faith to complete, in form and substance reasonably acceptable to both Parties, all of the agreements and other activities necessary to permit the purchase and sale of the Delivered Facility Output and the Environmental Attributes and other attributes pursuant to this Agreement, and (ii) if any governmental or administrative approval, permit, order or other authorization will be necessary relative to any provision of this Agreement or any transaction contemplated by this Agreement, each Party shall use all commercially reasonable efforts to assist in the obtaining of such approval, permit, order or other authorization.

24.14 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the nature of this Agreement, and other relevant factual information about the relationship. In the event during the Term, either Party is contacted by the media concerning this Agreement or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked, and the substance of any information provided to the media.

24.15 Survival. Rights and obligations which, by their nature, should survive termination or expiration of this Agreement, will remain in effect until satisfied, including without limitation, all outstanding financial obligations, and the provisions of Section 15 (Indemnity) and Section 22 (Dispute Resolution).

24.16 Entire Agreement. This Agreement, including the following exhibits which are attached and incorporated by reference herein, constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous oral or written agreements between the Parties with respect to the subject matter hereof.

Exhibit A	Facility Description and Site Maps
Exhibit B	Point of Delivery
Exhibit C	Interconnection Agreement
Exhibit D	Initial Capacity Determination Documentation
Exhibit E	Communication and Reporting
Exhibit F	Form of Independent Engineering Certification for Construction Adequacy for the Facility

Exhibit G	Form of Independent Engineering Certification for Operations and Maintenance Policy for the Facility
Exhibit H	Sample Forecast
Exhibit I	Generation Integration and Transmission Service Study
Exhibit J	GME Calculation
Exhibit K	GME Damages Calculation
Exhibit L	Delivered Facility Output Purchase Price
Exhibit M	Sample Delay Liquidated Damages Calculations
Exhibit N	Form of Letter of Credit for Delay Security
Exhibit O	Form of Letter of Credit for Operating Security
Exhibit P	Discretionary Curtailment Calculation
Exhibit Q	Delivered Facility Output Hourly Forecast Matrix

24.17 Eligible Contract Participant/Forward Contract Merchant. Each Party represents to the other party that it is an "eligible contract participant" within the meaning of Section 1(a)12 of the Commodities Exchange Act, as amended. Each Party further represents to the other party that it is a "forward contract merchant" within the meaning of 11 USCS § 101 of the United States Bankruptcy Code, as amended.

24.18 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the "public interest" standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956),* and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008)*.

24.19 Monetary References. Any referenced dollar ($) amounts shall be deemed to be in United States dollars.

24.20 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed as an original, and together shall constitute one and the same document.

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

[[INSERT]]	**AVISTA CORPORATION**
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____