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POWER PURCHASE AGREEMENT

BETWEEN

EL PASO ELECTRIC COMPANY

AND

[_____]

- [date] -

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POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this “**Agreement**”) is made as of this [] day of [], 20[], (“**Effective Date**”) by and between (i) El Paso Electric Company, a Texas corporation with a principal place of business at 100 North Stanton Street, El Paso, Texas (“**EPE**”), and (ii) [], a [] [] with a principal place of business at [] (“**Seller**”). EPE and Seller are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. EPE is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to (i) the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission and (ii) the laws of the State of Texas and the rules and regulations of the Public Utility Commission of Texas.

B. Seller desires to develop, design, construct, interconnect, own, operate, and maintain a [] facility on a site located in [] County, [], with a total Expected Nameplate Capacity of approximately [] MW (as further defined herein, the “**Facility**”); and

C. Seller desires to sell and deliver, and EPE desires to accept and receive the Solar Energy, Environmental Attributes, and Ancillary Services attributable to and delivered from the Facility (collectively, “**Product**”) to the Point of Delivery at the prices and on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 - RULES OF INTERPRETATION

1.1 Interpretation. Capitalized terms listed in this Agreement shall have the meanings set forth in **Exhibit A - Definitions** or as otherwise defined in this Agreement. Words not otherwise defined in this Agreement shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Good Utility Practices, and (iii) be given their well-known and generally accepted technical or trade meanings. The following rules of interpretation shall apply: (1) references to “Articles,” “Sections” or “Exhibits” shall be to articles, sections, or exhibits of this Agreement except as the context may otherwise require; (2) all Exhibits are incorporated into this Agreement; *provided however*, that in the event of a conflict with the terms of this Agreement, the Agreement shall control; and (3) use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation.” This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. 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. Unless specifically designated as DC, each reference to “MW” or “kW” herein, including any reference to “Nameplate Capacity,” shall be AC MW or AC kW, as applicable “**AC**” means alternating electric current; “**DC**” means direct electric current.

1.2 Interpretation with Other Agreements.

(A) This Agreement does not provide Seller authorization to interconnect the Facility or inject power into the Transmission Provider’s System. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that the Interconnection Agreement is/will be a separate contract and that (i) this Agreement is not binding on the Transmission

Provider, (ii) this Agreement does not create any rights between Seller and the Transmission Provider, and (iii) the Interconnection Agreement does not modify the Parties' rights and obligations hereunder. The applicable Transmission Provider shall be deemed to be a separate and unaffiliated contracting party for purposes of this Agreement, regardless of whether such Transmission Provider is EPE or an Affiliate of EPE.

(B) Seller shall be responsible for arranging and obtaining, at its sole cost and expense, Station Services.

1.3 Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (a) when this Agreement specifically references the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned, or delayed, and (b) wherever this Agreement specifically gives a Party a right to determine, require, specify, or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

ARTICLE 2 - TERM AND TERMINATION

This Agreement shall become effective as of the Effective Date, and shall remain in full force and effect until 11:59 pm on the last Day of the calendar month during which occurs the twentieth (20th) anniversary of the Commercial Operation Date (the "Term"), unless earlier terminated in accordance with the terms herein. Applicable provisions of this Agreement shall continue in effect after expiration of the Term or earlier termination to the extent necessary to (a) provide for final billings, payments and adjustments, (b) enforce or complete the duties, obligations or responsibilities of the Parties (including under Section 12.1, Section 12.2, Section 12.4, Article 13, Article 16 and Article 17 below, and (c) address any remedies or indemnifications arising prior to termination.

ARTICLE 3 - COMMERCIAL TERMS AND FACILITY DESCRIPTION

The following commercial terms apply to the transaction contemplated by this Agreement, as further defined or as more fully set forth in this Agreement:

COMMERCIAL TERMS

Point of Delivery:	The point on Transmission Provider's System at which Seller makes available and delivers to EPE the Solar Energy, as further described in <u>Exhibit C - Facility Description</u> .
Contract Price:	Set forth in <u>Exhibit J – Contract Price; Committed Capacity</u>
Expected Nameplate Capacity:	[] MW _{AC}
Committed Energy per Commercial Operation Year:	Set forth in <u>Exhibit J – Contract Price; Committed Capacity</u>
Day(s) of Week:	Monday through Sunday, including NERC holidays.

Hours:	Hour Ending 0100 - Hour Ending 2400, Monday through Sunday MPT.
Term:	Set forth in <u>Article 2</u> .
Scheduled Commercial Operation Date:	[_____], as may be extended as set forth herein.

Seller shall construct, interconnect, own, operate, and maintain the Facility according to Good Utility Practices and the Interconnection Agreement. The Facility is described in Exhibit C - Facility Description, which includes a scaled map that identifies the Site, the location of the Facility, the Interconnection Point and Interconnection Facilities, the Point of Delivery, and other important attributes of the Facility. The Facility shall include all equipment up to the Point of Delivery necessary to fulfill Seller’s obligations hereunder, including all equipment necessary (i) to meet the requirements of the Operating Procedures and (ii) to interconnect successfully with the Transmission Provider’s System. Prior to the Commercial Operation Date and during the Delivery Term, Seller shall be permitted to make changes with respect to any equipment or the design of the Facility, and any changes to Exhibit C –Facility Description, so long as such changes do not adversely affect Seller’s ability to perform its obligations hereunder. Promptly following the effectiveness or implementation of any modification permitted under this Section that causes the characteristics of the Facility to be materially different from those set forth in the then applicable version of Exhibit C – Facility Description, Seller shall deliver to EPE an updated version of Exhibit C – Facility Description.

ARTICLE 4 - PRE-COMMERCIAL OPERATION

4.1 Facility Development, Design, Construction.

(A) Seller shall (i) design, engineer, construct, and install the Facility in accordance with Good Utility Practices and all Applicable Laws; (ii) obtain all Approvals; (iii) interconnect the Facility to the Transmission Provider’s System, and (iv) obtain any land rights necessary for the Facility. In its efforts to achieve COD, Seller shall achieve the milestones set forth in Exhibit B – Construction Milestones and shall notify EPE promptly following achievement of each such milestone.

(B) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to EPE in a mutually agreed form, advising EPE of the current status of each Construction Milestone, any significant developments or delays (along with, in the case of any actual or anticipated delay in any Construction Milestone, a written action plan for making up delays and achieving Commercial Operation by the Scheduled Commercial Operation Date, which shall be subject to EPE’s reasonable review and comment), and Seller’s good faith estimate of the COD.

(C) Upon request and reasonable prior notice, EPE shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Site to verify compliance with this Agreement; *provided however*, that EPE shall comply with all of Seller’s applicable safety and health requirements. No action taken by EPE’s hereunder shall be construed as endorsement by EPE of the design, engineering, construction, or testing of the Facility nor as any express or implied warranty as to the performance, safety, durability, or reliability of the Facility.

4.2 Environmental Matters. Seller shall notify EPE promptly (i) if (and to what extent) any Environmental Contamination on the Site will preclude or interfere with Seller’s ability to perform its obligations hereunder, and (ii) Seller’s plan for remediation thereof that would allow Seller to perform

this Agreement as and when due. Throughout the Term, Seller promptly shall:

(A) disclose to EPE and remediate, at Seller's sole cost and expense, any Environmental Contamination identified at the Site;

(B) provide EPE with copies of any further environmental assessments or investigations of the Site (including associated raw data, if requested by EPE); and

(C) disclose to EPE the existence of any enforcement, legal, or regulatory action or proceeding relating to any alleged presence of Environmental Contamination and/or the alleged violation of any Applicable Law related to protection of human health, the environment, or natural resources, including protected species.

4.3 Permits. Seller shall obtain and pay for all Permits necessary under Good Utility Practices for Seller to perform its obligations hereunder. Seller shall keep EPE informed of its permitting efforts in its progress reports to EPE described in **Section 4.1(B)**. In such progress reports, Seller shall promptly inform EPE of (i) any Permits which Seller is unable to obtain, that are delayed, limited, suspended, terminated, or otherwise constrained, along with a statement of whether and to what extent any such circumstance may limit or preclude Seller's ability to perform hereunder, and (ii) Seller's plan to overcome such issue(s) to allow Seller to perform its obligations hereunder as and when due. EPE shall have the right to inspect and obtain copies of all Permits held by Seller. Seller represents and warrants to EPE that, except for those Permits identified in **Exhibit F – Permits**, all Permits and other actions required by Governmental Authorities to authorize Seller's execution, delivery, and performance of this Agreement have been duly obtained and are in full force and effect. Throughout the Term, Seller shall promptly disclose to EPE the existence of any enforcement, legal, or regulatory action or proceeding relating to the alleged violation of any Permit held by Seller which could materially interfere with Seller's performance hereunder.

4.4 Governmental Inspections. Seller shall notify EPE (i) in advance of any known upcoming material inspections by any Governmental Authority relating to the Facility, to allow EPE the opportunity to attend, and (ii) after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.

4.5 Commercial Operation.

(A) Seller shall cause COD to occur no later than the Scheduled Commercial Operation Date. Seller shall notify EPE of the date on which Seller believes the Facility has achieved Commercial Operation (a "**COD Notice**"). A COD Notice shall include all necessary supporting documentation of the satisfaction or occurrence of all COD Conditions. EPE shall have ten (10) Business Days to review a COD Notice and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions. Seller may notify EPE of completion of one or more COD Conditions on an individual and incremental basis prior to COD; provided, however, that EPE shall in all cases have up to ten (10) Business Days to review and object to each such notice; provided, however, that Seller's COD Notice shall be deemed accepted by EPE if EPE fails to object within such time period.

(B) In the event Seller determines that the Commercial Operation Date is not feasible or is impossible to achieve by the Scheduled Commercial Operation Date, Seller shall promptly notify EPE.

(C) For purposes hereof:

(1) the "**Commercial Operation Date**" or "**COD**" means 12:01 am on the Day after which Seller's COD Notice has been accepted by EPE or deemed accepted by EPE pursuant to

Section 4.5(A); and

(2) the “**COD Conditions**” are:

(a) an authorized officer of Seller has confirmed in writing that (1) all Permits necessary to commence operations and interconnect the Facility have been obtained and are in full force and effect; (2) Seller is in compliance with this Agreement in all material respects; and (3) the Facility is available to commence normal operations in accordance with this Agreement;

(b) Seller has demonstrated that (1) the Facility is interconnected to the Transmission Provider’s System and has been fully tested, achieved initial synchronization, and been successfully operated in conformance with the Interconnection Agreement; (2) Seller has received confirmation from the Transmission Provider that the Facility has been approved for commercial operation, as that term is defined under the Interconnection Agreement; and (3) Seller has made all other arrangements necessary to deliver Solar Energy to the Point of Delivery;

(c) Seller has obtained and provided to EPE a certification from an independent licensed professional engineer stating that the Facility has been completed in all material respects, except for “punch list” items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose and are not required for the safe operation of the Facility, the efficiency, reliability, operability, safety, or mechanical or electrical integrity of the Facility, or otherwise affect the Nameplate Capacity Rating of the Facility;

(d) Seller has demonstrated the functionality and reliability of the Facility’s communications systems and AGC interface with EPE’s SCC by demonstrating the capability of the Facility to receive and respond to signals from EPE’s SCADA System, and the accuracy of the Electric Metering Devices and their ability to communicate with EPE in accordance with **Exhibit N – Meter and Communications Requirements**;

(e) Solar Units comprising ninety-five (95%) of the Expected Nameplate Capacity of the Facility, and associated equipment sufficient to allow such Solar Units to generate and deliver Solar Energy, have been installed and are operable;

(f) Seller and EPE have each confirmed the Operating Procedures are finalized and will be in full effect upon the Commercial Operation Date;

(g) Seller has demonstrated Park Potential will reflect the data quality standards specified in **Section 8.3(A)**;

(h) Seller has demonstrated the accuracy and reliability of the data set forth in **Section 10.5** and the AGC data points to be sent from Seller to EPE via the SCADA System;

(i) Seller has demonstrated the ability to fulfill the forecasting requirements including the usage of the availability forecast system as described in herein and the Operating Procedures;

(j) The Security Fund remains in effect and in compliance with the terms of this Agreement; and

(k) Seller has executed and delivered to EPE all insurance documents or instruments required under **Article 16**.

4.6 Test Energy. Seller shall coordinate the production and delivery of Test Energy with EPE with not less than sixty (60) Days' prior notice. Seller shall reasonably cooperate with EPE in connection with registering the Facility for participation by EPE in the California ISO's Western Energy Imbalance Market and any other real-time or day-ahead energy or capacity markets joined by EPE; provided, however, EPE agrees to reimburse to Seller its reasonable out-of-pocket costs incurred in connection with such cooperation.

4.7 Capacity Shortfall Damages. If the Commercial Operation Date has been achieved consistent with Section 4.5 and the Nameplate Capacity is less than the Expected Nameplate Capacity, Seller shall use Commercially Reasonable Efforts to achieve the Expected Nameplate Capacity. If Seller has not achieved Commercial Operation of the Facility at the Expected Nameplate Capacity on or before one hundred twenty (120) Days after the Commercial Operation Date, then no later than one hundred fifty (150) Days after the Commercial Operation Date, Seller shall pay to EPE as liquidated damages and not as a penalty the amount of [_____ Dollars (\$_____)] per MW of Reduced Capacity ("**Capacity Shortfall Damages**").

ARTICLE 5 - DELIVERY

5.1 Arrangements.

(A) Seller shall be responsible for arranging, maintaining, and paying the costs associated with the interconnection of the Facility to the Transmission Provider's System. Seller shall comply with the Transmission Provider's requirements for interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff. Seller shall reasonably cooperate with any request by EPE to assist in EPE's efforts to have the Facility approved as a Network Resource with the Network Service Provider.

(B) To the extent permitted by Applicable Law and Section 20.18 of this Agreement, Seller hereby authorizes EPE to contact, discuss, and obtain information concerning the Facility and Interconnection Facilities directly with/from the Transmission Provider. Promptly upon request by EPE, Seller shall confirm such authorization in writing to the Transmission Provider and any applicable transmission owners in such form as may be requested by EPE or the Transmission Provider.

(C) To the extent required, EPE shall arrange and be responsible for scheduling and transmission services beyond the Point of Delivery with respect to the output of the Facility. EPE shall be the market participant with respect to the output of the Facility, as defined by the Transmission Provider.

(D) Seller shall be responsible for all interconnection, electrical losses, transmission and Ancillary Services arrangements, and costs required to deliver the Solar Energy to the Point of Delivery. EPE shall be responsible for all electrical losses, transmission and ancillary services arrangements, and costs required to transmit and deliver Solar Energy beyond the Point of Delivery.

5.2 Market Events. If at any time during the Term, an alternative market design is implemented in which the Facility will or can participate (a "**Market Event**"), and such Market Event materially changes the interconnection and delivery requirements of this Agreement or has a material adverse effect on either Party, the Parties shall negotiate in good faith amendments to facilitate the delivery of Solar Energy, or to change protocols for operation of the Facility accordingly, in all cases consistent to the extent reasonably possible with the terms of this Agreement and consistent with the intended allocation of benefits and burdens between the Parties in this Agreement; provided, however that neither Party shall have any obligation to agree to any changes that would materially increase such

Party's liabilities and obligations under this Agreement.

5.3 Electric Metering Devices.

(A) All Electric Metering Devices used to measure Solar Energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement, at no cost to EPE. All Electric Metering Devices shall meet the requirements of **Exhibit N - Metering and Communications Devices.**

(1) Meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery in accordance with applicable manufacturers' parameters or as otherwise agreed by the Parties.

(2) Seller shall arrange any necessary authorization to provide EPE access to all Electric Metering Devices via electronic remote communications and via physical access for purposes related to this Agreement and shall provide EPE the opportunity to be present at any time when such Electric Metering Devices are to be inspected, tested, or adjusted.

(B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("**Back-Up Metering**"); *provided however*, that the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon reasonable advance written notice from the other Party, the installing Party shall test the Back-Up Metering. The actual cost of any such test shall be borne by the Party requesting the test, unless, upon such test, Back-Up Metering is inaccurate by more than one percent (1%), in which case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(C) If an Electric Metering Device or Back-Up Metering fails to register, or if the measurement is inaccurate by more than one percent (1%), an adjustment shall be made correcting all measurements as follows:

(1) If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, if installed, to determine the amount of such inaccuracy; *provided however*, that Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent (1%), the Parties shall use the best available information for the period of inaccuracy, adjusted for losses to the Point of Delivery in accordance with applicable manufacturers' parameters or as otherwise agreed by the Parties.

(2) If the Parties cannot agree on the actual period during which inaccurate measurements were made, the period shall be the shorter of (i) the last one-half of the period from the immediately preceding accurate test of the Electric Metering Device relative to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(3) To the extent that an adjustment period covers a period for which payment has already been made by EPE, EPE shall use the corrected measurements as determined in accordance with this **Article 5** to re-compute the amount due for the period of the inaccuracy. The net difference shall be reflected as an adjustment on the next regular invoice.

ARTICLE 6 - CONDITIONS PRECEDENT

6.1 EPE Conditions Precedent. Unless expressly waived in writing by EPE, EPE's obligation to accept and pay for any Product is subject to EPE's determination that the following

conditions set forth below have been satisfied to its satisfaction.

(A) Network Transmission Service. EPE's obligation to accept and pay for any Product is subject to approval by the Network Service Provider of EPE's (i) application for designation of the Facility or this Agreement as a Network Resource for EPE's native load customers; (ii) application for designation of the Facility or this Agreement as a Network Load; each of (i) and (ii) above without conditions materially unsatisfactory to EPE or requirements of material transmission upgrades (collectively, the "NSP Approvals"). EPE shall no later than ten (10) Business Days after the Effective Date, make a written request for all NSP Approvals and thereafter use Commercially Reasonable Efforts to obtain such NSP Approvals within one hundred fifty (150) Days from the Effective Date ("Designation Approval Date"). EPE shall provide Seller prompt written notice upon receipt of all such NSP Approvals. If any or all of the NSP Approvals are not received by the Designation Approvals Date or any NSP Approval would require conditions materially unsatisfactory to EPE in its sole discretion, EPE shall promptly provide Seller written notice notifying Seller that EPE elects to terminate this Agreement, upon which the Parties shall have no obligations or liabilities to each other hereunder, subject to EPE's obligation to return the Security Fund to Seller.

(B) Regulatory Approvals. EPE's obligation to accept and pay for any Product is subject to receipt of all required PRC/PUC Approvals with respect to the Agreement, as determined by EPE in its sole discretion. EPE shall no later than [] apply for all PRC/PUC Approvals, as EPE determines are required, and thereafter use Commercially Reasonable Efforts to obtain such PRC/PUC Approvals. Seller shall reasonably cooperate with EPE's efforts to obtain the PRC/PUC Approvals. EPE shall have the right to terminate this Agreement by written notice to Seller: (i) at any time within thirty (30) Days following issuance of a written order by the PUCT or NMPRC rejecting any PRC/PUC Approval, or granting any PRC/PUC Approval with conditions unacceptable to EPE in its sole discretion, (ii) at any time after the []th Day following the latest date that EPE submitted its PRC/PUC Approvals, if all PRC/PUC Approvals have not been received in a form acceptable to EPE in its sole discretion, (iii) at any time within thirty (30) Days following timely request for reconsideration (in whole or in any material part) by any Person, of any PRC/PUC Approvals, and/or (iv) at any time within thirty (30) Days following timely appeal by any Person, of any PRC/PUC Approvals. If EPE elects to terminate this Agreement as provided in this **Section 6.1(B)**, neither of the Parties shall have any obligations or liabilities to each other hereunder as a result of such termination, subject to EPE's obligation to return the Security Fund to Seller.

ARTICLE 7 - SALE AND PURCHASE

7.1 General Obligation.

(A) Beginning on the first Day of the Delivery Term and continuing until the last day of the Term, subject to the terms and conditions of this Agreement (including the Operating Procedures), Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to EPE, and EPE shall receive and purchase at the Point of Delivery, the Product.

(B) Seller shall not sell the Product to any third party during the Delivery Term.

(C) Title and risk of loss of the products and services transacted by this Agreement shall transfer from Seller to EPE at the Point of Delivery.

7.2 AGC. Beginning on the Commercial Operation Date, subject to the Operating Procedures, EPE shall provide instructions to Seller for the dispatch of Solar Energy through the SCC AGC system. Seller shall ensure that, throughout the Delivery Term, the SCADA System signal is capable of functioning in compliance with all applicable requirements of this Agreement and on all AGC Set-Points within the margin of error specified in the manufacturer's energy set point margin of error and the Facility AGC Remote/Local status is in "Remote" set-point control during normal operations.

7.3 Environmental Attributes.

(A) For and in consideration of all other provisions of this Agreement, Seller hereby agrees to sell to EPE, without the payment by EPE of any additional consideration beyond the Contract Price, all Environmental Attributes generated by the Facility during the Term and from the commencement of Test Energy. No later than thirty (30) days following the Commercial Operation Date, Seller shall register the Facility with WREGIS (and provide EPE evidence of such registration) and take all actions throughout the Term to ensure that the Facility remains eligible under WREGIS; provided, however, that if there is a Change in Law that results in increased costs required to be incurred by Seller in connection with maintaining such eligibility, and such increase in costs exceeds [_____ Dollars (\$_____)] in any Commercial Operation Year or [_____ Dollars (\$_____)] during the Term (the “**Compliance Cap**”), then EPE shall: (y) reimburse Seller for such costs in excess of the Compliance Cap, or (z) excuse Seller from performing the obligations of this Agreement that would otherwise cause it to incur incremental new costs in excess of the Compliance Cap. No later than sixty (60) Days after Seller becomes aware the actions to ensure eligibility will cause it to incur costs in excess of the Compliance Cap, Seller shall provide to EPE notice with an estimate of the expected costs caused by the eligibility actions, along with reasonable supporting documentation. Within thirty (30) Days of the delivery of such notice with the estimate and reasonable supporting materials, EPE shall provide Seller notice of (I) EPE’s request for Seller to incur costs in excess of the Compliance Cap, in which case EPE shall reimburse Seller for such excess costs, or (II) EPE’s waiver of Seller’s performance of such actions.

(B) Title to the Environmental Attributes shall transfer from Seller to EPE upon generation of associated Solar Energy by the Facility. The Parties shall execute all additional documents and instruments reasonably requested by EPE in order to further document the transfer of the Environmental Attributes to EPE or its designees. Seller shall not report under any applicable program that any of the Environmental Attributes provided to EPE hereunder belong to any Person other than EPE. Seller hereby irrevocably assigns to EPE all rights, title, and authority for EPE to own, hold, and manage the Environmental Attributes in EPE’s own name and for EPE’s account.

(C) Seller shall, at Seller’s cost, register, transfer, and track the transfer of Environmental Attributes to EPE or as otherwise reasonably instructed by EPE in writing, using WREGIS. Seller shall, at EPE’s reasonable request and at EPE’s cost, register, transfer, and track Future Environmental Attributes, if applicable pursuant to **Section 7.3(F)**, on EPE’s behalf in WREGIS or another applicable REC tracking program. Seller shall transfer to EPE any Environmental Attributes and, if applicable pursuant to **Section 7.3(F)**, Future Environmental Attributes, as soon as practicable, but in no event later than the date that is fifteen (15) Business Days following the date on which such Environmental Attributes and, if applicable pursuant to **Section 7.3(F)**, Future Environmental Attributes, are available for transfer or retirement in WREGIS or other applicable REC tracking program. Seller shall ensure that the number of REC certificates or other entitlements registered and transferred to, or retired on the behalf of, EPE equals the Solar Energy delivered to EPE for the relevant year.

(D) Without limiting this **Section 7.3**, if as of ninety (90) Days after the end of an applicable billing period, an Environmental Attribute Deficit exists for such billing period, then, Seller shall first use Commercially Reasonable Efforts to obtain replacement Environmental Attributes of similar type and characteristics and deliver them to EPE up to the quantity of the Environmental Attribute Deficit. Seller must deliver appropriate replacement Environmental Attributes for the Environmental Attribute Deficit within one hundred twenty (120) Days after the end of the applicable billing period. If Seller has not obtained replacement Environmental Attributes for the full amount of the Environmental Attributes Deficit, the difference between the Environmental Attributes Deficit and the replacement Environmental Attributes shall be the “**Environmental Attributes Shortfall**.” Seller shall pay to EPE an amount (the “**Environmental Attribute Deficit Damages**”) equal to (i) the Environmental Attribute Shortfall (in MWh), multiplied by (ii) the lower of (a) the market value for Environmental Attributes

registered in WREGIS or such other tracking program as specified by EPE pursuant to Section 7.3(A) of similar quality and vintage as the Environmental Attribute Shortfall, each as determined by EPE in its reasonable discretion, stated on a per MWh basis, and (b) EPE's actual cost to obtain replacement Environmental Attributes. Environmental Attribute Deficit Damages shall be EPE's sole remedy for any Environmental Attribute Deficit.

(E) Seller shall not report in any public communication, or under any program, that any of the Environmental Attributes or part thereof provided to EPE hereunder belong to any Person other than EPE or EPE's designee. Seller hereby irrevocably assigns to EPE all rights, title, and interest in the Environmental Attributes conveyed to EPE to own, hold and manage in EPE's own name and for EPE's account, including any rights associated with any Solar Energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Environmental Attributes.

(F) If, during the Term, Seller becomes aware that the Facility becomes eligible for any Future Environmental Attributes, Seller shall notify EPE and take Commercially Reasonable Efforts to secure for and transfer to EPE such Future Environmental Attributes; provided that such actions shall not (i) require changes to the design or other characteristics of the Facility or upgrades or other modifications to any Interconnection Facilities or transmission facilities, (ii) reduce the delivery or receipt of Product, (iii) reduce, or limit, in any manner, any Tax Benefits for which the Facility is eligible, or (iv) subject Seller to any third party costs or expenses exceeding the Compliance Cap unless EPE agrees to reimburse Seller for such cost and expenses in excess of such amount (collectively, the "**Eligibility Conditions**"). Seller shall take Commercially Reasonable Efforts to secure such Future Environmental Attributes for EPE's benefit provided, that (y) the Eligibility Conditions are satisfied, and (z) such actions are permitted by and capable of being implemented pursuant to Applicable Laws. If EPE notifies Seller that it does not wish to receive the benefits of such Future Environmental Attributes, then Seller can monetize such Future Environmental Attributes for its own benefit or a third party; provided, such action does not interfere with the qualification, offering, bidding, planning, scheduling or other disposition of EPE's Environmental Attributes.

7.4 Ancillary Services.

(A) During the Term, Seller shall make available to EPE and EPE shall own, all Ancillary Services available from the Facility, including but not limited to the sole right to sell the Ancillary Services associated with the Facility and to retain all revenues therefrom, subject to the Operating Procedures.

(B) The Parties acknowledge and agree that the compensation that Seller receives from EPE under this Agreement includes full compensation for Seller's fixed costs for providing reactive power service. Seller shall not file a rate schedule at FERC for reactive power compensation payable prior to the expiration of the Term or the earlier termination of this Agreement.

ARTICLE 8 - PAYMENT CALCULATIONS

8.1 Contract Price. Except as provided in Section 8.3, commencing on the Commercial Operation Date, each month EPE shall pay to Seller the Contract Price for all Solar Energy delivered to EPE during that month; provided, however, that EPE shall never be required to pay for net instantaneous output of the Facility (as measured at the Point of Delivery) in excess of the Generation Limit.

8.2 Test Energy. EPE shall pay Seller the Test Energy Rate for all Test Energy delivered to EPE.

8.3 Excess Energy. Seller shall notify EPE promptly upon Seller's delivery of Solar Energy

that exceeds one hundred ten percent (110%) of the Committed Energy for a Commercial Operation Year. The Contract Price owed by EPE to Seller shall be reduced fifty percent (50%) for all Excess Energy for the balance of that Commercial Operation Year.

8.4 Curtailement.

(A) EPE or Transmission Provider may require Seller, by telephonic communication or through use of the AGC Set Point, to curtail the delivery of Solar Energy to EPE from the Facility, for any reason and in EPE or Transmission Provider's sole discretion. Seller shall promptly comply with each such notification.

(B) With the exception of Economic Curtailment, no payment shall be due to Seller from EPE for curtailed Solar Energy.

(C) Following the Commercial Operation Date, with respect to any Economic Curtailment, EPE shall pay to Seller the Contract Price for Solar Energy that Seller would have delivered to EPE but was prohibited due to the Economic Curtailment ("**Deemed Energy**").

(D) The volume of Deemed Energy shall be calculated using the best-available data and methods to determine an accurate representation of the amount of Solar Energy not delivered due to an Economic Curtailment. To the extent available, the Parties shall use Seller's real time Park Potential communicated to EPE through the SCADA System as the proxy for Potential Energy, except to the extent that Park Potential is demonstrated not to accurately reflect the Potential Energy (plus or minus two percent (2%) average error for non-curtailment periods). During those periods of time when the Park Potential is unavailable or does not accurately represent Potential Energy, the Parties shall use the best available data obtained through commercially reasonable methods to determine the Potential Energy.

8.5 Failure to Deliver Committed Energy.

(A) Seller shall be required to deliver to EPE no less than the Committed Energy during each Commercial Operation Year.

(B) If Seller delivers less than the Committed Energy, as calculated pursuant to **Exhibit L – Methodology for Adjusting Committed Energy**, in any Commercial Operation Year ("**Energy Shortfall**") then Seller shall pay liquidated damages ("**Energy Shortfall Damages**") as calculated in **Section 8.4(C)**. The "**Energy Shortfall Amount**" in any Commercial Operation Year shall be an amount equal to (i) the Committed Energy minus (ii) the Solar Energy in the applicable Commercial Operation Year.

(C) The Energy Shortfall Damages payment shall be equal to (i) the Energy Shortfall Amount for the applicable Commercial Operation Year multiplied by the Solar Energy Payment Rate per MWh for the applicable Commercial Operation Year. Within forty-five (45) Days of the end of any Commercial Operation Year for which there is an Energy Shortfall, Seller shall provide notice to EPE in writing of the amount of the Energy Shortfall Damages and provide supporting documentation, if any, and Seller shall pay EPE the amount of Energy Shortfall Damages shown in such notice within sixty (60) Days after the end of such Commercial Operation Year. Each Party agrees and acknowledges that (A) the damages that EPE would incur due to Seller's delivery of less than the Committed Energy (and associated Environmental Attributes) in any Commercial Operation Year would be difficult or impossible to predict with certainty, and (B) the Energy Shortfall Damages are a reasonable forecast of just compensation for such damages, and (C) Seller will not seek to raise as a defense to payment of Energy Shortfall Damages in any legal or equitable proceeding (including any mediation pursuant to **Section 13.2**) that such damages are unenforceable as a penalty or otherwise contrary to Applicable Law or public policy.

(D) Excused Hours shall be considered generated for the purposes of this provision if,

in each such case, such Solar Energy otherwise would have been produced by the Facility.

ARTICLE 9 - BILLING AND PAYMENT

9.1 Billing. The billing period hereunder shall be the prior calendar month. As soon as practicable and in any event within five (5) Business Days after the end of each month, Seller shall submit an invoice to EPE in a form and by a method to be determined by the Parties, showing the amount due Seller for the relevant month, specifying the products and services provided, billing meter register reads for relevant measurement quantities, total usage in KWH being billed, date and time at which accumulated and billed production was read by the Electric Metering Devices, all billing parameters, rates and factors, and any other data relevant to the calculation of payments due to Seller. Such invoice shall include an explanation of any items in dispute, as well as all supporting documentation, in reasonable detail, upon which Seller relies.

9.2 Payment. All payments shall be remitted via check or electronic funds transfer, as designated by the owed Party, on or before the twentieth (20th) Business Day following receipt of the applicable invoice, provided that such invoice was submitted to the paying Party within twenty (20) Business Days after the end of the month as provided in Section 9.1. If a payment is late, a late payment charge shall be applied to the unpaid balance for the number of Days payment was late and shall be added to the next billing statement. Late payment charges shall include interest calculated using the greater of four percent (4%) per year and the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date). The invoicing Party at any time may offset against amounts owed to the other Party, any undisputed amounts, including liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by such other Party to the invoicing Party. Seller and EPE may and shall net their obligations to each other hereunder, and payment of the net amount shall discharge all mutual undisputed obligations between the Parties.

9.3 Billing Disputes. Either Party may dispute invoiced amounts pursuant to Section 13.1, but shall pay to the other Party at least the portion of invoiced amounts that is not disputed, on or before the invoice due date. Full payment of an invoice shall not waive a Party's right to later dispute the invoice provided that notice of a disputed invoice is presented by the disputing Party to the other Party within twelve (12) months of an invoice due date, accompanied by an explanation of the specifics of the dispute as well as a request for a refund or an additional payment, whichever is appropriate. When the billing Dispute is resolved, the owing Party shall pay the amount finally determined to be owed within fifteen (15) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with Section 9.2.

ARTICLE 10 - OPERATION AND MAINTENANCE

10.1 Operation and Administration.

(A) Seller shall staff, control, and operate the Facility with a Qualified Operator consistent with Applicable Law, Good Utility Practices, the Operating Procedures, and this Agreement. Personnel of Seller shall be available 24 hours a day 7 days a week via telephone or other electronic means with (i) the capability of remotely starting, operating, and stopping the Facility within ten (10) minutes, and (ii) the ability to be present at the Site within sixty (60) minutes or sooner, to the extent required in accordance with Good Utility Practices.

(B) Seller shall comply with Good Utility Practices, its obligations hereunder, the requirements of all Governmental Authorities and all reasonable requirements of EPE in the operation of the Facility.

(C) Seller shall provide to EPE day-ahead availability schedules for the Facility in

accordance with the Operating Procedures and any reporting requirements required for compliance with NERC reliability standards. Seller shall remain responsible to ensure the timeliness and accuracy of forecasts and any changes to the real-time or forecast availability of the Facility.

(D) Notwithstanding any provision to the contrary contained in this Agreement, Seller shall not be required to operate the Facility in a manner inconsistent with Applicable Law.

10.2 Facility Maintenance.

(A) Seller shall maintain the Facility in accordance with Applicable Law, Good Utility Practices, the Operating Procedures and this Agreement. Seller shall coordinate its regular maintenance requirements for the Facility with EPE (“**Maintenance Schedules**”). Seller shall provide Maintenance Schedules, including planned outages, to EPE in writing and sufficiently in advance for EPE’s Commercially Reasonable review, and shall be subject to EPE’s Commercially Reasonable approval. Seller shall coordinate with EPE and the Transmission Provider on the timing and duration of planned outages. EPE has the right to not permit a planned outage if it conflicts with the requirements of the ERO or if the ERO rejects the planned outage request.

(B) Seller shall minimize the amount of scheduled maintenance during the months of January, February, June, July, August, September and December to the maximum extent consistent with Good Utility Practices. Seller shall coordinate with EPE and the Transmission Provider on the timing and duration of planned outages.

(C) Seller shall notify EPE’s SCC by telephone call or other automated means acceptable to EPE as promptly as possible upon discovering that the Facility is unable to deliver all or part of any scheduled quantity of Solar Energy due to a Forced Outage. Seller shall notify EPE’s SCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than one (1) hour after the Forced Outage occurs. Seller shall immediately inform EPE’s SCC of changes in the expected duration of the Forced Outage except to the extent relieved of this obligation by EPE’s SCC with respect thereto.

10.3 Books and Records. Seller shall maintain an accurate and up-to-date operating log at the Facility, in electronic format, with records of production for each hour; changes in operating status; Forced Outages; information required by Governmental Authorities in the prescribed format; and other information reasonably requested by EPE or as set forth in the Operating Procedures. Seller and EPE shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including metering, Facility tests, billing and payment records, and such records as may be required by Governmental Authorities. Originals or copies of all Operating Records shall be maintained at the Site or such other location as may be specified by Seller from time to time. Seller shall retain all such records for a period of two (2) years following the end of the Term or such longer period as may be required by Applicable Law. EPE may examine and make copies of such Operating Records from time to time upon reasonable request, during normal business hours.

10.4 Access to Facility. Representatives of EPE shall have access to the Facility from time to time, upon providing Commercially Reasonable prior notice, to read meters, perform inspections, and take such other actions as may be appropriate to facilitate EPE’s performance of this Agreement. While at the Facility, such Representatives shall observe Seller’s standard safety precautions and shall conduct themselves in a manner that will not interfere with operation of the Facility.

10.5 Real Time Data.

(A) Seller shall communicate all data necessary for EPE to integrate the Facility into EPE’s SCC in real time through the Facility’s SCADA System in accordance with the Operating

Procedures. Seller shall maintain the Facility's SCADA System and communications systems so that they are capable of interfacing with and reacting to EPE's AGC Set-Point and responding to signals from EPE's SCC in accordance with the AGC Protocols.

(B) Seller shall use Commercially Reasonable Efforts to maintain and, when necessary, adjust the real time Park Potential of the Facility when EPE communicates to Seller a measured difference of plus or minus two percent (2%) between the metered Solar Energy and Park Potential, during periods when generation is not curtailed.

10.6 Accreditation. Seller shall perform from time to time, at its expense, any reporting and testing of the Facility required by Governmental Authorities.

10.7 Operating Committee and Operating Procedures.

(A) No later than thirty (30) Days prior to the Scheduled Commercial Operation Date, Seller shall notify EPE of its intent to establish an Operating Committee with respect to the Facility. Following such notification from Seller, EPE and Seller shall each appoint one Representative and one alternate Representative to act as the Operating Committee in matters relating to the Parties' performance obligations hereunder and to develop operating arrangements for the generation, delivery and receipt of the Solar Energy and other Product. The Parties' initial Representatives on the Operating Committee are set forth in **Exhibit D – Notices and Contact Information**.

(B) The Operating Committee will develop mutually agreeable written Operating Procedures to address matters such as day-to-day communications; key personnel; operations center interface; metering, telemetering, telecommunications, and data acquisition procedures; clearances and switching practices; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties. Seller shall be responsible for preparing a draft of the Operating Procedures, and any amendments or revisions thereto, for consideration by the Operating Committee.

(C) The Operating Committee shall review the requirements for AGC and data collection from time to time after the Effective Date and may agree on modifications thereto to the extent necessary or convenient for operation of the Facility in accordance with this Agreement.

(D) The Operating Committee shall have authority to coordinate technical and day-to-day operational matters relating to performance of this Agreement and to attempt to resolve potential Disputes; *provided however*, that except as explicitly provided herein, the Operating Committee shall have no authority to amend or waive any provision of this Agreement. Seller shall schedule meetings of the Operating Committee no less frequently than once per quarter following the Commercial Operation Date.

ARTICLE 11 - SECURITY FOR PERFORMANCE

11.1 Security Fund.

(A) During the Term of this Agreement, Seller shall establish, fund, and maintain a security fund, pursuant to the provisions of this **Article 11** ("**Security Fund**") which shall be available to (i) pay any amount due EPE pursuant to this Agreement, whether arising before, on, or after the Commercial Operation Date or termination of this Agreement, (ii) provide EPE security that Seller will construct the Facility to meet the Construction Milestones and achieve Commercial Operation by the Scheduled COD, and (iii) provide security to EPE to cover damages, including Liquidated Delay Damages, Capacity Shortfall Damages, and Energy Shortfall Damages. Seller shall establish the Security Fund at a level of One Hundred Dollars (\$100) per kW of the Expected Nameplate Capacity (the "**Required Amount**"), thirty percent (30%) of which shall be established no later than five (5) Business

Days following the Effective Date. Seller shall increase the Security Fund to the Required Amount within five (5) Business Days following satisfaction or waiver of all conditions set forth in **ARTICLE 6**.

(B) Seller shall maintain the Security Fund at the Required Amount throughout the remainder of the Term; provided, that, commencing on the Commercial Operation Date, the Required Amount will be reduced to Seventy-Five Dollars (\$75) per kW of the Expected Nameplate Capacity. Seller shall replenish the Security Fund to the applicable portion of the Required Amount within five (5) Business Days after any draw on the Security Fund by EPE; provided, however, that Seller shall have no obligation to replenish the Security Fund prior to the Commercial Operation Date.

11.2 EPE Rights and Remedies. In addition to any other remedy available to it under this Agreement or at law, EPE may, to the extent Seller fails to perform or abide by the terms of this Agreement, or by order of a Governmental Authority of competent jurisdiction, before, on, or after termination of this Agreement, draw from the Security Fund such amounts as are necessary to recover amounts owing to EPE pursuant to this Agreement. Such amounts include any damages due to EPE and any amounts for which EPE is entitled to indemnification under this Agreement. EPE must provide notice to Seller ten (10) Business Days prior to drawing such amounts from the Security Fund. If Seller fails to deliver payment of such amounts by check or electronic funds transfer to EPE within ten (10) Business Days of such notification, EPE may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this Article, and from all such forms, and in any sequence EPE may select. Any failure to draw upon the Security Fund or other security for any damages or other amounts due to EPE shall not prejudice EPE's rights to recover such damages or amounts in any other manner.

11.3 Form.

(A) The Security Fund shall be established in the amounts specified in **Section 11.1**, shall be maintained at Seller's sole cost and expense, and shall be in the form described in **Section 11.3(A)(1)**, **Section 11.3(A)(2)** or **Section 11.3(A)(3)**; *provided however*, that Seller shall have the right at any time and from time to time to replace the forms and instruments provided with replacement forms or instruments meeting the requirements specified herein.

(1) An irrevocable standby letter of credit substantially in the form of **Exhibit G – Form of Letter of Credit**, from an Issuer that is a United States-based commercial bank or a U.S. branch of a foreign bank with at least Ten Billion Dollars (\$10,000,000,000) in assets and an unsecured bond rating (not enhanced by third-party support) equivalent to A- or better as determined by Standard & Poor's and a Credit Rating of A3 or better as determined by Moody's, or, if either one or both are not available, equivalent ratings from alternate rating sources acceptable to EPE (the "**Letter of Credit**"). In addition, if such unsecured bond rating of the Issuer is exactly equivalent to A-, the Issuer must not be on credit watch or similar classification, or have a negative outlook (or the equivalent) by a Rating Agency. Such Letter of Credit must be consistent with this Agreement and shall include a provision for at least thirty (30) Days advance notice to EPE of any expiration or earlier termination of the Letter of Credit, so as to allow EPE sufficient time to exercise its rights under the Letter of Credit should Seller fail to extend or replace the same. The form of the Letter of Credit must meet EPE's requirements to ensure that claims or draw-downs can be made unilaterally by EPE in accordance with the terms of this Agreement. Such security must be issued for a minimum term of three hundred and sixty-five (365) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty-five (365) Days or more (or, if shorter, the remainder of the Term) no later than thirty (30) Days prior to each expiration date of the Letter of Credit. If the Letter of Credit is not renewed or extended as required herein, EPE shall have the right to draw immediately upon the Letter of Credit.

(2) United States currency deposited with an Issuer ("**Cash Collateral**"), in which EPE holds a first and exclusive security interest perfected by control, either: (i) in an account under

which EPE is designated as beneficiary with sole authority to draft from the account or otherwise access the security; or (ii) in an account held by Issuer as escrow agent with instructions to pay claims made by EPE pursuant to this Agreement, such instructions to be in a form satisfactory to EPE (each an “**Escrow Account**”). Security provided in this form shall include a requirement for immediate notice to EPE from Issuer and Seller in the event that the sums held as security in the Escrow Account do not at any time meet the required level for the Security Fund as set forth in this **Section 11.3**. Funds held in the Escrow Account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller.

(3) A guaranty substantially in the form of **Exhibit H – Form of Guaranty** (a “**Seller Guaranty**”) issued by a Person that (i) has and maintains a Credit Rating equal to or better than Investment Grade, or (ii) is otherwise acceptable to EPE.

(B) Promptly following the end of the Term and the completion of all of Seller’s obligations under this Agreement, EPE shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

(C) If there is an early termination of this Agreement that is not due to an Event of Default by Seller and no amounts remain outstanding and unpaid by Seller under the Agreement, EPE shall take all actions necessary to release the balance of the Security Fund (including any accumulated interest, if applicable, and net of any taxes on such interest paid or payable by EPE) to Seller.

(D) Seller shall reimburse EPE for the reasonably incurred incremental direct third party and out of pocket expenses (including the reasonable fees and expenses of counsel) incurred by EPE in connection with the preparation, negotiation, execution or release of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller’s obligations under this **Article 11**, except for releases due to an Event of Default by EPE hereunder.

11.4 **Replacement.** In the event that the Security Fund ever fails to comply with the requirements of this **Article 11**, or EPE determines in a commercially reasonable manner that an event has occurred or circumstances have developed that threaten to cause the Security Fund to fail to comply with the requirements of this **Article 11**, Seller shall be required to replace the Security Fund with security in compliance with this **Article 11** within five (5) Business Days following notice thereof from EPE.

11.5 **Survival.** The Security Fund shall survive termination of this Agreement to be available to pay any amounts owed to EPE arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller’s obligations hereunder (excluding any obligations that survive the termination of this Agreement); or (ii) termination of this Agreement for any reason prior to the expiration of the Term, EPE shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this Agreement. EPE may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

ARTICLE 12 - DEFAULT AND REMEDIES

12.1 **Construction Defaults.** From the Effective Date through the Commercial Operation Date, subject to the notice and cure provision set forth in this **Section 12.1**, any Construction Event of Default shall give EPE the unconditional right, in its sole discretion, to pursue any or all of the remedies available under this Agreement, including: (i) terminate this Agreement; and (ii) draw upon or otherwise negotiate and liquidate the Security Fund to the extent of amounts owed by Seller to EPE hereunder. EPE shall provide notice to Seller thirty (30) Days prior to taking any of the actions set forth in this **Section 12.1** (which shall be in addition to the cure periods specified below for each Construction Event of Default), specifying the Construction Event(s) of Default triggering such action(s). Each of the

following shall constitute a “**Construction Event of Default**”:

(A) Seller becomes insolvent, becomes a debtor in any bankruptcy or receivership proceedings, or dissolves as a legal business entity and, in the case of any involuntary proceeding in respect of the foregoing, such proceeding is not dismissed or stayed within sixty (60) Days of the filing thereof or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(B) Any representation or warranty made by Seller is false or misleading in any material respect, and Seller fails to comply with such representation or warranty within thirty (30) Days after a demand by EPE to do so, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(C) Seller fails to comply with any other material terms and conditions of this Agreement (other than payment obligations, which are addressed in **Section 12.1(F)**) within sixty (60) Days after a demand by EPE to do so, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(D) Seller fails to deliver, increase or maintain the Security Fund as required by **Article 11**, and such non-performance is not cured within five (5) Business Days after EPE gives notice to Seller of such non-performance;

(E) Seller fails to obtain or maintain insurance in accordance with the requirements of **Article 16** and **Exhibit E – Insurance Coverage**, and such failure continues for ten (10) Business Days of Seller’s receipt of written notice from EPE thereof, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days; or

(F) Subject to **Section 13.1**, Seller fails to make, when due, any payment required pursuant to this Agreement, if such failure is not remedied within ten (10) Business Days after notice is received by Seller.

12.2 **Operational Events of Default.** After the Commercial Operation Date and throughout the Delivery Term, subject to the notice and cure provisions set forth in this **Section 12.2**, any Operational Event of Default shall give EPE the unconditional right, in its sole discretion, to pursue any or all of the remedies available under this Agreement, including: (i) terminate this Agreement; and (ii) draw upon or otherwise negotiate and liquidate the Security Fund to the extent of amounts owed by Seller to EPE hereunder. EPE shall provide notice to Seller thirty (30) Days prior to taking any of the actions set forth in this **Section 12.2** (which shall be in addition to the cure periods specified below for each Operational Event of Default), specifying the Operational Event(s) of Default triggering such action(s). Each of the following shall constitute an “**Operational Event of Default**”:

(A) Seller becomes insolvent, becomes a debtor in any bankruptcy or receivership proceedings, or dissolves as a legal business entity; and, in the case of any involuntary proceeding in respect of the foregoing, such proceeding is not dismissed or stayed within sixty (60) Days of the filing thereof or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(B) Any representation or warranty made by Seller is false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on EPE, and Seller fails to comply with such representation or warranty within thirty (30) Days after a demand by EPE to do so, or such longer period

as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(C) Seller fails to comply with any other material terms and conditions of this Agreement (other than payment obligations, which are addressed in **Section 12.2(D)**) within sixty (60) Days after a demand by EPE to do so, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(D) Subject to **Section 13.1**, Seller fails to make, when due, any payment required pursuant to this Agreement, if such failure is not remedied within ten (10) Business Days after notice is received by Seller;

(E) The Facility fails to generate at least eighty-five (85%) of Committed Energy, as calculated pursuant to **Exhibit L – Methodology for Adjusting Committed Energy**, to be delivered to EPE under this Agreement for any eighteen (18) consecutive-month period (provided that Excused Hours shall be considered generated for the purposes of this provision if, in each such case, such Solar Energy otherwise would have been produced by the Facility).

(F) Seller fails to deliver, increase or maintain the Security Fund as required by **Article 11**, and such non-performance is not cured within five (5) Business Days after EPE gives notice to Seller of such non-performance;

(G) Seller fails to obtain or maintain insurance in accordance with the requirements of **Article 16** and **Exhibit E – Insurance Coverage**, and such failure continues for ten (10) Business Days of Seller's receipt of written notice from EPE thereof, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days; or

(H) This Agreement is assigned by or the Facility is transferred by Seller, or Seller undergoes a Change of Control without the requisite consent of EPE, in each case as required pursuant to **Section 19.1**.

12.3 Default by Seller: Failure to Achieve COD.

(A) *COD Delay*. EPE shall suffer damages if the Facility fails to achieve COD by the Scheduled COD (“**COD Delay**”). Seller shall be liable to and pay EPE the amounts set forth below per MW of Facility Nameplate Capacity per Day (“**Liquidated Delay Damages**”) as liquidated damages and not a penalty, for any COD Delay.

(1) Two Hundred Fifty Dollars (\$250) beginning on the first (1st) Day of COD Delay and continuing through the one hundred twentieth (120th) Day of COD Delay; and

(2) One Thousand Dollars (\$1,000) beginning on the one hundred twenty-first (121st) Day of COD Delay and continuing through the one hundred fiftieth (150th) Day of COD Delay; and

(3) One Thousand Two Hundred Fifty Dollars (\$1,250) beginning on the one hundred fifty-first (151st) Day of COD Delay and continuing for each additional Day of COD Delay.

Except as provided in **Section 12.3(D)** below, the payment of Liquidated Delay Damages shall be EPE's sole and exclusive remedy for a COD Delay. Liquidated Delay Damages shall begin to accrue on the Day after the Scheduled COD until the first to occur of COD or termination of this Agreement pursuant to **Section 12.3(D)** below.

(B) Extension of Construction Milestones and the Scheduled Commercial Operation Date. After executing this Agreement, Seller may extend any Construction Milestone (including the Scheduled COD) on a Day-for-Day basis for up to three hundred sixty five (365) Days in the aggregate as a result of any (a) Force Majeure events, or (b) Supply Chain Events (each of (i) or (ii), a “**Permitted Extension**”) and Liquidated Delay Damages shall only begin to accrue at the end of such three hundred sixty five (365) Day period if COD has not been achieved by such time for any Permitted Extension.

(C) Cure. Seller shall have a cure period of forty-five (45) Days for its failure to achieve Commercial Operation by the Scheduled COD; provided, however, that if during such period Seller provides a written opinion from a mutually agreeable independent licensed professional engineer that Commercial Operation can reasonably be achieved within an additional forty-five (45) Day period, then Seller’s cure period to achieve Commercial Operation shall be no more than ninety (90) Days after the Scheduled COD. Liquidated Delay Damages shall continue to accrue during any cure period.

(D) Termination. Upon the failure of Seller to cure a COD Delay within the applicable cure period set forth in **Section 12.3(C)**, EPE may, at its sole option, terminate this Agreement immediately upon notice to Seller. Seller’s sole liability to EPE in the event of a termination pursuant to this **Section 12.3(D)** shall be the amount of then-applicable Security Fund minus any Liquidated Delay Damages paid and/or incurred by Seller to date.

12.4 Default by EPE. Subject to the notice and cure provision set forth in this **Section 12.4**, any EPE Event of Default shall give Seller the unconditional right, in its sole discretion, to terminate this Agreement. Seller shall provide notice to EPE thirty (30) Days prior to terminating this Agreement, specifying the Event(s) of Default triggering such termination, and shall not terminate if EPE has remedied the specified Event(s) of Default within the specified cure period, and if no such cure period is provided, within the thirty (30) Day period following Seller’s notification. The following shall constitute “**EPE Events of Default**”:

(A) EPE becomes insolvent, becomes a debtor in any bankruptcy or receivership proceedings, or dissolves as a legal business entity, and, in the case of any involuntary proceeding in respect of the foregoing, such proceeding is not dismissed within sixty (60) Days of the filing thereof or such longer period as may be required to effectuate compliance if EPE has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(B) Any representation or warranty made by EPE is false or misleading in any material respect, and EPE fails to comply with such representation or warranty within thirty (30) Days after a demand by Seller to do so;

(C) EPE fails to comply with any other material terms and conditions of this Agreement (other than payment obligations, which are addressed in **Section 12.4(D)**) within sixty (60) Days after a demand by Seller to do so, or such longer period as may be required to effectuate compliance if EPE has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days; or

(D) Subject to **Section 13.1**, EPE fails to make, when due, any payment required pursuant to this Agreement, if such failure is not remedied within thirty (30) Days after notice is received by EPE.

12.5 Limitations on Damages.

(A) If the non-defaulting Party elects to terminate the Agreement, as provided in **Sections 12.1, 12.2** and **12.4**, as applicable, the non-defaulting Party shall calculate (and provide detailed calculations to the defaulting Party), in a commercially reasonable manner, the Forward Settlement Amount as of the termination date of the Agreement. The non-defaulting Party shall aggregate all

payments due and amounts owing under this Agreement into a single amount by netting out (a) all payments and other amounts that are due to the defaulting Party under this Agreement, plus, at the option of the non-defaulting Party, any cash or other form of security then available to, or held for the benefit of, the non-defaulting Party, against (b) the Forward Settlement Amount that is due to the non-defaulting Party, plus any or all other amounts due to the non-defaulting Party under this Agreement, so that all such amounts shall be netted out into a single liquidated amount (the “**Termination Payment**”). The defaulting Party shall be liable to the non-defaulting Party to the extent the Termination Payment exceeds zero dollars (\$0). In no event shall the non-defaulting Party be obligated to make a Termination Payment to the defaulting Party. If the defaulting Party disputes the non-defaulting Party’s calculation of the Termination Payment, in whole or in part, the defaulting Party shall, within ten (10) Business Days of receipt of the non-defaulting Party’s calculation of the Termination Payment, deliver a Dispute Notice and commence the dispute resolution procedure provided in Article 13; provided, however, the defaulting Party shall first post collateral in the form of either cash, Letter of Credit or other security reasonably acceptable to the non-defaulting Party in an amount equal to the non-defaulting Party’s calculation of the Termination Payment.

(B) **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR TREBLE DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES REGARDLESS OF WHETHER THE RELEVANT CAUSE OF ACTION ARISES FROM STATUTE, IN TORT OR CONTRACT** (except to the extent expressly provided herein); *provided however*, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the Indemnifying Party shall be liable for, and obligated to reimburse the Indemnified Party for all such damages.

(C) To the extent damages required to be paid hereunder are liquidated, the Parties acknowledge that actual damages would be substantial but difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.6 Bankruptcy. This Agreement grants each Party the contractual right to “cause the liquidation, termination or acceleration” of the transactions within the meaning of Sections 556, 560 and 561 of the U.S. Bankruptcy Code, as they may be amended superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies hereunder in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, *inter alia*, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended, superseded or replaced from time to time.

12.7 Cumulative Remedies. Except as explicitly provided to the contrary in this Agreement, each right or remedy of the Parties provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein.

12.8 Duty to Mitigate. Each Party shall use Commercially Reasonable Efforts to mitigate any damages it may incur as a result of a default by the other Party hereunder.

12.9 Specific Performance. In addition to the other remedies specified herein, upon any Operational Event of Default of Seller that is not cured within the applicable cure period, EPE may elect to treat this Agreement as being in full force and effect and EPE shall have the right to seek specific performance.

ARTICLE 13 - DISPUTE RESOLUTION

13.1 Negotiation.

(A) In the event of any dispute arising under or associated with the Parties' performance of this Agreement (a "**Dispute**"), within ten (10) Business Days following notice by either Party (a "**Dispute Notice**"), (i) each Party shall appoint a Representative, and (ii) the Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally, and inexpensively.

(B) In the event the Parties' Representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the designated senior managers for both Parties shall negotiate in good faith to resolve the Dispute. If such senior managers are unable to resolve the Dispute thereafter, either Party may seek available legal remedies, subject to **Section 13.5**.

13.2 Mediation. Disputes not resolved under **Section 13.1** shall, upon mutual consent, be submitted to mediation pursuant to the Mediation Rules of the American Arbitration Association. The Parties shall select the mediator within fifteen (15) Days of the request for mediation. Mediation shall be conducted in Texas, at a location to be determined by the Parties, notwithstanding anything to the contrary under the Mediation Rules of the American Arbitration Association.

13.3 Other Dispute Processes. If neither the negotiations under **Section 13.1** nor mediation successfully resolves the Dispute within ninety (90) Days of the delivery of the Dispute Notice, the Parties agree that an action may be filed in the appropriate state or federal court located in Texas.

13.4 Governing Law. The interpretation and performance of this Agreement and all actions related hereto (whether sounding in contract, tort or otherwise), shall be governed and construed in accordance with the laws of the State of Texas exclusive of conflict of laws principles.

13.5 Venue. The Parties submit to the exclusive jurisdiction of the state courts of the State of Texas for purposes of resolving any Dispute hereunder. Venue for any court proceedings shall lie exclusively in the District Courts of El Paso County, Texas or, if jurisdictionally available, the United States District Court for the Western District of Texas, El Paso Division.

13.6 Waiver of Jury Trial. **SELLER AND EPE EACH HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY 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 OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND EPE RELATED HERETO, OR THE INTERPRETATION OF THIS AGREEMENT, AND EXPRESSLY AGREE TO HAVE ANY DISPUTES BE ADJUDICATED BY A JUDGE OF THE COURT HAVING JURISDICTION, WITHOUT A JURY. THIS SECTION 13.6 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

ARTICLE 14 - FORCE MAJEURE

14.1 Definition. For purposes hereof, "**Force Majeure**" means an event or circumstance that delays or prevents a Party from performing its obligations hereunder, which event or circumstance (i) was not within the control of or the result of the fault or negligence of the Party claiming excuse and (ii)

which by exercise of due diligence could not reasonably have been avoided. “Force Majeure” includes actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, sabotage (including arson and vandalism), explosions and fires, hurricanes, floods, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement), and pandemics and epidemics (provided, however, that each Party acknowledges the effects of the COVID-19 pandemic as of the Effective Date, and that no delay or failure in performance is expected based on the scope of such effects as of the Effective Date). Force Majeure shall not include:

- a. inability, or excess cost, to procure any equipment necessary to perform this Agreement;
- b. acts or omissions of a third party (including vendors and contractors to Seller), unless such acts or omissions are themselves excused by reason of Force Majeure;
- c. failure to timely to apply for, or diligently pursue, the Permits set forth on **Exhibit F – Permits** hereto;
- d. mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment;
- e. Environmental Contamination at the Site;
- f. Increased costs of equipment, materials, or labor, or changes in market conditions affecting the economics of either Party (including a change in equipment prices or labor rates or increased inflation), or any other economic hardship (including lack of money) of either Party;
- g. failure or delays in delivery of equipment or materials that is not caused by an independent event of Force Majeure;
- h. an inability to obtain labor, manpower, spare parts, materials, or equipment for the construction of the Facility that is not caused by an independent event of Force Majeure;
- i. any failure or inability to make payments when due; and
- j. labor strikes, slowdowns, work stoppages, or other labor disruptions only affecting the Facility.

14.2 Applicability of Force Majeure. A Party shall be relieved of its obligations to perform this Agreement and shall not be considered to be in default with respect to any obligation hereunder if and to the extent such Party is delayed or prevented from fulfilling such obligation by Force Majeure, *provided however*, that: (i) such Party gives prompt notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resumes performance of its obligations hereunder as soon as practicable thereafter; and (iv) such Party provides notice upon conclusion of the Force Majeure.

14.3 Limitations on Effect of Force Majeure.

(A) Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure.

(B) In no event will the existence of Force Majeure extend this Agreement beyond its stated Term.

(C) If, (i) prior to COD, Force Majeure affecting either Party continues for a period of one hundred eighty (180) Days or (ii) after COD, Force Majeure affecting either Party continues for a

period of three hundred sixty-five (365) Days, either Party may, at any time following the end of such period, terminate this Agreement upon notice to the other Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

ARTICLE 15 - REPRESENTATIONS, WARRANTIES AND COVENANTS

(A) Each Party hereby represents and warrants to the other as follows, which representations and warranties shall be deemed to be repeated, if applicable, by each Party throughout the Term:

(1) Such Party is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State in which the Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party. It has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations hereunder.

(2) The Party's execution, delivery, and performance of all of its obligations hereunder have been duly authorized by all necessary organizational action, and do not and will not:

a. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which, subject to redaction for confidential or proprietary information, shall be delivered to the other Party upon its request);

b. violate any Applicable Law, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations hereunder;

c. result in a breach or constitute a default under the representing Party's formation documents, bylaws or equivalent, or under any agreement relating to its management or affairs, any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations hereunder; or

d. result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations hereunder.

(3) This Agreement is a valid and binding obligation of the representing Party.

(4) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.

(B) Subject to the rights of the Facility Lenders as provided in this Agreement, Seller further hereby covenants to EPE throughout the Term that Seller shall deliver to EPE the Product required by this Agreement free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.

ARTICLE 16 - INSURANCE

16.1 Evidence of Insurance. No later than commencement of construction and thereafter at

least five (5) Business Days prior to each applicable expiration date, Seller shall provide EPE with a copy of an insurance certificate acceptable to EPE evidencing that insurance coverages for the Facility are in force and in compliance with the specifications for insurance coverage set forth in **Exhibit E – Insurance Coverage** to this Agreement. Such certificate shall:

- (A) name EPE as an additional insured (except worker’s compensation);
- (B) provide that EPE shall receive thirty (30) Days prior written notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such notice shall be ten (10) Days for non-payment of premiums);
- (C) provide a waiver of any rights of subrogation against EPE, its Affiliates and their officers, directors, agents, subcontractors, and employees; and
- (D) indicate that the Commercial General Liability policy has been endorsed as described above.

16.2 **Policy Requirements.** All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor’s rating of at least A. All policies shall be written on an occurrence basis, except as provided in **Section 16.4**. All policies shall contain an endorsement that Seller’s policy shall be primary in all instances regardless of like coverages, if any, carried by EPE. Seller may satisfy its insurance requirements using any reasonable combination of primary and secondary coverage.

16.3 **No Implied Limitation.** Seller’s liability hereunder is not limited to the amount of insurance coverage required herein.

16.4 **Term and Modification of Insurance.**

(A) All insurance required hereunder shall cover occurrences during the Term and for a period of two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a “claims-made” basis, such insurance shall provide for a retroactive date not later than the Effective Date and such insurance shall be maintained by Seller for a minimum of six (6) years after the Term.

(B) EPE shall have the right, at times deemed appropriate to EPE during the Term, to request Seller to modify the insurance minimum limits specified in **Exhibit E – Insurance Coverage** in order to maintain Commercially Reasonable coverage amounts. Seller shall make Commercially Reasonable Efforts to comply with any such request.

(C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide notice to EPE, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating facilities of similar type, geographic location and capacity. Upon receipt of such notice, Seller shall use Commercially Reasonable Efforts to obtain other insurance that would provide comparable protection against the risk to be insured.

16.5 **Application of Proceeds.** Except to the extent otherwise required by the Financing Documents, Seller shall apply any casualty insurance proceeds to reconstruction of the Facility following any material casualty that occurs more than eighteen (18) months prior to the end of the Term.

ARTICLE 17 - INDEMNITY

17.1 **Indemnification: General.** Each Party (the “**Indemnifying Party**”) shall indemnify, defend and hold the other Party (the “**Indemnified Party**”) harmless from and against all third party

claims, demands, lawsuits (including citizen suits), losses, liabilities, fines, penalties, and expenses (including attorneys' fees) (generally, "**Indemnifiable Losses**"), to the extent caused by: (A) a violation or alleged violation of Applicable Laws by the Indemnifying Party; or (B) the negligence, intentional acts, and other misconduct of the directors, officers, employees, subcontractors, vendors, or agents of the Indemnifying Party.

17.2 Indemnification: Environmental. Seller shall indemnify, defend and hold EPE harmless from and against all Indemnifiable Losses arising out of any claim by any Governmental Authority or other third party alleging Environmental Contamination at the Site and/or illegal disposal of Hazardous Materials off-Site, regardless of merit and regardless of Seller's responsibility therefor.

17.3 Indemnification for Fines and Penalties. Any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of the other Party) for non-compliance with any municipal, state or federal laws shall be the sole responsibility of the non-complying Party.

17.4 Limitations.

(A) The foregoing indemnification obligations shall apply notwithstanding any contributory misconduct of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's misconduct caused the damages.

(B) Neither Party shall be indemnified for Indemnifiable Losses resulting from the sole negligence or willful misconduct of the directors, officers, employees, or agents of such Party.

(C) These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy. Nothing in this **Article 17** shall enlarge or relieve Seller or EPE of any liability to the other for any breach of this Agreement.

17.5 Procedures.

(A) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this **Article 17** may apply, the Indemnified Party shall provide notice thereof to the Indemnifying Party; *provided however*, that a delay in providing such notice shall limit the obligations of the Indemnifying Party only to the extent that such delay actually prejudices the ability of the Indemnifying Party to contest the claim or defend the proceeding.

(B) The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party; *provided however*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall reasonably conclude that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense.

(C) If an Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may contest, settle, or pay such claim at the expense of the Indemnifying Party; *provided however*, that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or otherwise warrants settlement.

17.6 Amounts Owed. In the event that a Party is obligated for indemnification under this **Article 17** the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a Commercially

Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18 - LENDER PROVISIONS

18.1 Accommodation of Facility Lender.

(A) EPE shall provide such consents to collateral assignment, certifications, representations, estoppels, information or other documents, as may be reasonably requested by Seller in connection with the financing or refinancing of the Facility (a “**Lender Consent**”). If Seller collaterally assigns this Agreement to Seller’s financing parties or agents thereof, EPE shall, if requested, enter into a consent to collateral assignment with Seller’s financing parties or agents thereof substantially in the form of **Exhibit K – Form of Lender Consent**. In providing any Lender Consent, estoppel or other certification or document, EPE shall have no obligation to:

- (1) modify the terms of this Agreement except as may be set forth in the form in **Exhibit K – Form of Lender Consent**;
- (2) provide any consent or estoppel that has a Material Adverse Effect on any of EPE’s rights, benefits, risks, or obligations hereunder;
- (3) transfer or release any property or property interests of EPE;
- (4) release or subordinate (or cause the release or subordination) of any lien on any property of EPE for the benefit of Seller or the Facility Lender; or
- (5) permit any lien to be placed on property of EPE.

(B) Seller shall reimburse, or shall cause the Facility Lender to reimburse, EPE for the direct expenses (including the fees and expenses of counsel) incurred by EPE in the preparation, negotiation, execution and/or delivery of each Lender Consent and any documents requested by Seller or the Facility Lender pursuant to this **Section 18.1**.

18.2 Notices.

(A) Seller shall provide EPE with a notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such notice, EPE shall provide to the Facility Lender a copy of each notice of alleged default delivered to Seller under **Section 12.1** or **Section 12.3**, and EPE will accept a cure thereof performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this Agreement or the relevant Lender Consent.

(B) Within ten (10) Days following Seller’s receipt of each notice of default or Facility Lender’s intent to exercise any remedies under the Financing Documents, Seller shall deliver a copy of such notice to EPE.

ARTICLE 19 - ASSIGNMENT AND RIGHT OF FIRST OFFER

19.1 Assignment by Seller.

(A) Seller shall not sell, exchange, or otherwise transfer the Facility or any material portion thereof to any third party, nor shall Seller undergo any Change of Control (whether voluntary or by operation of law), absent the prior written consent of EPE (other than pursuant to **Section 19.1(C)**), which shall not be unreasonably withheld, conditioned or delayed. EPE shall have no obligation to provide any consent under this **Article 19** unless:

- (1) Seller has complied with **Sections 19.3**, if and as applicable

(2) Seller has provided to EPE such information concerning the transferee's direct and indirect ownership as EPE reasonably requests;

(3) the transferee has substantial experience in the operation of electric generating facilities substantially similar to the Facility, either directly, through its affiliates or through an operator acceptable to EPE;

(4) the transferee maintains or establishes a Security Fund in conformance with **Section 11.1** of this Agreement that is acceptable to EPE;

(5) Seller has provided notice to EPE at least ninety (90) Days prior to the closing date of the proposed transaction; and

(6) Seller pays or reimburses EPE for the direct expenses (including the fees and expenses of counsel) incurred by EPE in connection with reviewing the proposed transaction consistent with this **Section 19.1**.

(B) Any Change of Control effected without fulfilling the requirements of this Agreement shall be null, void and a breach of this Agreement.

(C) Notwithstanding this **Section 19.1**, EPE's consent shall not be required for: (i) any assignment or transfer of this Agreement by Seller to an Affiliate of Seller; (ii) any assignment of this Agreement by Seller to any Facility Lender in connection with any financing, refinancing or other financial arrangements and the transactions contemplated thereby pursuant to **Section 18.1**; or (iii) if Seller has complied with the requirements of **Section 19.3**, any sale, exchange or transfer of the Facility or Change of Control of Seller to a Permitted Transferee; *provided*, in each case, that any such assignee or transferee has agreed to assume all obligations of Seller (accrued and prospective) hereunder via a writing reasonably satisfactory to EPE.

(D) Except as otherwise specified, no assignment shall relieve Seller of its obligations hereunder, nor impair any security posted by Seller unless such security is replaced in accordance with **Article 11**.

19.2 Assignment by EPE.

(A) EPE may assign this Agreement to any Affiliate, or to any successor that provides retail electric service in all or substantially all of EPE's service territory and is subject to rate and quality service regulation under the jurisdiction of the Commissions. Any other assignment of this Agreement by EPE shall require the prior written consent of Seller, not to be unreasonably withheld or delayed.

(B) If an assignee of EPE possesses a Credit Rating equal to or better than Investment Grade or EPE's Credit Rating as of the date of assignment (whichever is higher), Seller shall release EPE from its obligations hereunder if so requested by EPE. Except for the foregoing, no assignment shall relieve EPE of its obligations hereunder.

(C) Any assignee, transferee or successor of EPE shall assume all obligations of EPE (accrued and prospective) hereunder via a writing reasonably satisfactory to Seller. Before this Agreement is assigned by EPE, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

19.3 Right of First Offer.

(A) Following the Commercial Operation Date, Seller shall not (i) sell or transfer all or substantially all of its interest in the Facility or (ii) effect or permit a Change of Control, unless prior to commencement of binding negotiations with respect to any such sale, transfer or Change of Control, Seller

provides written notice thereof to EPE (a “**Proposed Sale Notice**”), which Proposed Sale Notice shall include a description of the price and other material terms upon which Seller (or any direct or indirect parent of Seller) desires to sell or transfer such interest in the Facility or direct or indirect equity interests in Seller resulting in a Change of Control. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that a Proposed Sale Notice shall not be required to be provided to EPE in connection with (x) the direct or indirect sale of the equity interests in Seller to one or more tax equity investors in connection with a tax equity financing of the Facility (including pursuant to any sale-leaseback financing) or the exercise of rights or remedies by any tax equity investor, (y) an exercise of rights or remedies by a Facility Lender under an applicable financing document relating to the Facility or this Agreement or (z) the direct or indirect sale or transfer of the equity interests in Seller to an Affiliate of Seller,

(B) Upon receipt of such Proposed Sale Notice, EPE shall have thirty (30) Days in which to provide notice to Seller indicating whether EPE is interested in negotiating the terms and conditions of the Proposed Sale Notice with Offeror (a “**Proposed Purchase Notice**”). If EPE provides such Proposed Purchase Notice, then EPE shall, and Seller shall cause Offeror to, negotiate in good faith for a period of up to ninety (90) Days from the date of EPE’s Proposed Purchase Notice and use Commercially Reasonable Efforts to determine if they are able to reach mutual agreement on a term sheet that sets forth the fundamental terms and conditions of the Proposed Sale Notice.

(C) If (i) EPE does not provide such Proposed Purchase Notice to Offeror within such fifteen (30) Day period set forth in **Section 19.3(B)** indicating that EPE is interested in negotiating the terms and conditions of the Proposed Sale Notice with Offeror following a Proposed Sale Notice (or provides notice to Seller that EPE elects not to enter into such negotiation), (ii) Offeror and EPE are unable to execute a term sheet that sets forth the fundamental terms and conditions of the Proposed Sale Notice within the ninety (90) Day period set forth in **Section 19.3(B)** or (iii) Offeror and EPE are unable to execute a definitive agreement consummating the terms of the Proposed Sale Notice within one hundred twenty (120) Days after the date of the Proposed Purchase Notice (each, a “**Proposed Purchase End Date**”), then Offeror shall be free to negotiate the sale or transfer of all or substantially all of its interest in the Facility or Change of Control as described in the Proposed Sale Notice with any third party; provided, however, that, prior to consummating any such sale, transfer or Change of Control, Offeror shall provide EPE with a concise summary of the commercial terms negotiated by Offeror with such third party, subject to any confidentiality obligations to which Offeror is subject in connection with such sale, transfer or Change of Control (a “**Notice of Proposed Third Party Sale**”). In the event the Notice of Proposed Third Party Sale contains terms that taken as a whole are materially more favorable to such third party than those set forth in the Proposed Sale Notice or as presented by Offeror to EPE during any negotiations undertaken pursuant to **Section 19.3(B)**, then such Notice of Proposed Third Party Sale shall constitute an offer by Offeror to enter into an agreement with EPE on the same commercial terms outlined in the Notice of Proposed Third Party Sale, and EPE shall have thirty (30) Days following receipt of the Notice of Proposed Third Party Sale to accept the offer consistent with the commercial terms set forth in the Notice of Proposed Third Party Sale or to waive such offer. If (x) the Notice of Proposed Third Party Sale does not contain terms that taken as a whole are materially more favorable to such third party than those set forth in the Proposed Sale Notice or as presented by Offeror to EPE during any negotiations undertaken pursuant to **Section 19.3(B)** or (y) EPE does not provide such written notice to Offeror accepting the offer described in the preceding sentence within the thirty (30) Day period following receipt of the Notice of Proposed Third Party Sale, then Offeror may proceed with negotiating and consummating the proposed transaction as described in the Notice of Proposed Third Party Sale with such third party.

(D) If Offeror fails to (i) present a Notice of Proposed Third Party Sale within one hundred twenty (120) Days after the applicable Proposed Purchase End Date, or (ii) consummate the sale of the Offered Interest to a third party consistent with the terms of the Notice of Proposed Third Party Sale within three hundred sixty five (365) Days after the applicable Proposed Purchase End Date, then Seller shall provide another Proposed Sale Notice consistent with the requirements set forth in **Section 19.3(A)**

before Offeror commences or continues negotiations with any third party regarding, or consummates any, sale, transfer or Change of Control subject to this **Section 19.3**.

(E) This **Section 19.3** shall be specifically enforceable by EPE, without bond and without the need to prove irreparable harm.

(F) Subject to any confidentiality obligations to which Offeror is subject in connection with such sale, transfer or Change of Control, Seller shall cooperate in all respects reasonably necessary for EPE to exercise its rights pursuant to this **Section 19.3** and shall operate the Facility in the ordinary course of business following the date of issuance of a Proposed Sale Notice.

ARTICLE 20 - MISCELLANEOUS

20.1 Notices.

(A) Notices required by this Agreement shall be in writing and addressed to the other Party at the addresses noted in **Exhibit D – Notices and Contact Information**, as either Party updates such addresses from time to time by notice to the other Party. A notice shall be deemed to have been received as follows: (1) if it is delivered by email, when the recipient, by an email sent to the email address for the sender stated in **Exhibit D – Notices and Contact Information** or by a notice delivered by another method in accordance with this **Section 20.1(A)**, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this **Section 20.1(A)**; and, (2) If it is delivered in writing, when receipt is acknowledged in writing by the counterparty (or absent such acknowledgement, when delivered via third-party messenger or via FedEx or other reputable overnight courier service). Any notice shall be deemed to have been received by the close of the Business Day on which it was delivered. Real-time or routine communications concerning Facility operations shall be exempt from this **Section 20.1(A)**.

(B) The Parties recognize the need for accurate communications between them. Each Party consents to the recording of telephone conversations between their employees and Representatives, with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this Agreement.

20.2 Taxes.

(A) As between the Parties, EPE shall be solely responsible for the payment of (1) any sales, use or equivalent taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the receipt and purchase of Product hereunder, and (2) any taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the transmission of Solar Energy beyond the Point of Delivery.

(B) Subject to **Section 20.2(A)**, Seller shall be solely responsible for any and all present and future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility and the Site (including *ad valorem* taxes on the Facility and the Site), and any taxes imposed at and prior to the Point of Delivery with respect to the Product to be sold and delivered to EPE hereunder, whether calculated based upon cost, value, labor, capital, production, savings, green attributes or other parameters. Seller’s prices under **Article 8** are inclusive of such taxes and impositions during the Term, and Seller assumes the risk of changes in such taxes after the Effective Date.

(C) The Parties shall cooperate to minimize tax exposure, *provided however*, that neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder.

20.3 Applicable Laws. Each Party shall comply with all Applicable Laws (including the Transmission Tariff).

(A) As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

(B) Each Party shall promptly disclose to the other Party, any material violation of any Applicable Laws arising out of the Facility and/or performance of this Agreement.

(C) Upon permanent retirement of the Facility, Seller shall decommission and remove the Facility and remediate the Site if and when required by Applicable Laws.

(D) Seller acknowledges that as a government contractor EPE is subject to Applicable Laws regarding equal employment opportunity and affirmative action, including 41 C.F.R. §60-1.4(a)(1-7). Such Applicable Laws may also be applicable to Seller as a subcontractor to EPE. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law.

(E) Except as otherwise set forth herein, each Party assumes the risk of changes in Applicable Laws following the Effective Date that affect such Party's costs of ownership and operation of the assets, and its performance under this Agreement.

20.4 Fines and Penalties. Seller shall pay when due all fees, fines, penalties and costs incurred by EPE, Seller and/or their agents, employees or contractors arising from negligent action or inaction by Seller, its employees, or subcontractors with any provision of this Agreement, or any contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination

20.5 Rate Changes.

(A) The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the Term hereof. Neither Party shall seek (nor support any third party seeking) any prospective or retroactive change to the rates or terms of service hereunder pursuant to Section 205, 206 or 306 of the Federal Power Act.

(B) The standard of review for changes to this Agreement whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (aka the "Mobile-Sierra doctrine"), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008).

20.6 Certifications. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before either of the Commissions.

20.7 Disclaimer of Third-Party Beneficiaries. In executing this Agreement, EPE does not and does not intend to extend its credit or financial support for the benefit of any Facility Lender or any other third-party transacting with Seller. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this Agreement.

20.8 Relationship of the Parties.

(A) This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties, nor to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this Agreement to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of EPE for any purpose; nor shall Seller represent to any person that he or she is or shall become a EPE employee.

20.9 Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

20.10 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in force and effect; *provided however, that* EPE and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.11 Complete Agreement; Amendments. The terms and provisions contained in this Agreement constitute the entire agreement between EPE and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between EPE and Seller with respect to the sale and delivery of the product and services required by this Agreement. Any amendment of this Agreement, or any waiver of any provision hereof, shall be evidenced by a writing signed by the Party/ies to be bound thereby.

20.12 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.13 Binding Effect. This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.

20.14 Headings. Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

20.15 Counterparts and Electronic Signatures. This Agreement may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument. A manually signed copy of this Agreement, or a copy of this Agreement signed with an electronic or digital signature, delivered by e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a signed copy of this Agreement.

20.16 Press Release. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size and nature of the Facility, the Term, and other relevant factual information about the relationship.

20.17 Exhibits. Either Party may change the information in **Exhibit D – Notices and Contact Information** at any time by notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this Agreement or with the mutual consent of both Parties.

20.18 Confidentiality.

(A) For purposes hereof, “**Confidential Information**” means this Agreement and written information delivered by one Party to the other from time to time during the Term or in connection with this Agreement, which information is labeled prominently as “Confidential,” “Proprietary” or the like and specifically references this Agreement; *provided however*, that “Confidential Information” shall not include information that:

- (a) is publicly available as of the Effective Date, or becomes publicly available during the Term through no fault of the recipient Party;
- (b) can be documented was independently developed by the recipient Party; and/or
- (c) is disclosed to the recipient Party from an ultimate source other than the protected Party, without breach of this Agreement by the recipient Party.

(B) The recipient Party shall (i) maintain the confidentiality of all Confidential Information of the protected Party, using the same degree of care used by the recipient Party to protect its own Confidential Information (and in any event not less than a reasonable degree of care), and (ii) shall use Confidential Information only in connection with its performance of this Agreement. Confidential Information may be disclosed by the recipient Party to its Representatives, subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this **Section 20.18** the recipient Party shall be responsible.

(C) Provided that Confidential Information is not disclosed by or for a recipient Party to a (i) J.P. Morgan Chase & Co. (together with its Affiliates, “**J.P. Morgan**”) business group other than J.P. Morgan Asset Management’s Alternatives-Infrastructure Investments Group, no such other business group(s) shall be deemed to be a “Representative” for purposes of this Agreement, and (ii) fund, investment vehicle, or separate account that is sponsored, advised, and/or managed by J.P. Morgan Investment Management Inc. and/or its Affiliates, no such fund, investment vehicle, or separate account shall be deemed to be a “Representative” for purposes of this Agreement.

(D) Either Party may disclose Confidential Information to the Commissions, its Representatives, intervenors, participants or consumer counsel in any regulatory or administrative proceedings before the Commissions, or pursuant to any regulatory requirement outside of a proceeding, without consent of or notice to the other Party, *provided*, that the disclosing Party shall submit such Confidential Information in accordance with the Commissions’ confidentiality rules and procedures, Commission protective order or signed non-disclosure agreement.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

Seller:

EPE:

[_____]

EL PASO ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**EXHIBIT A
DEFINITIONS**

The following terms shall have the meanings set forth herein:

“AC” shall have the meaning set forth in Section 1.1.

“Affiliate” of any designated person or entity means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the designated person or entity by the power to direct or cause the direction of the management of the policies of designated person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract or otherwise.

“AGC” or “Automatic Generation Control” means the equipment and capability of the Facility to automatically adjust the generation quantity and Ancillary Services within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Facility’s capability of accepting an AGC Set-Point electronically, and the automatic adjustment and regulation of the Facility’s Solar Energy and Ancillary Services via the SCADA System.

“AGC Protocols” means the protocols for AGC included in Exhibit I - AGC Protocols; Data Collection; Availability Reporting, as such protocols may be modified from time to time in accordance with Section 10.7.

“AGC Remote/Local” means a handshake electronic signal sent from the Facility to the SCC AGC system, and from the SCC AGC system to the Facility, indicating the Facility is receiving AGC Set-Point locally (from the Facility) or remotely (SCC AGC system) and is following that AGC Set-Point.

“AGC Set-Point” means the EPE-generated analog or digital signal sent by the SCADA System to the Facility. The AGC Set-Point is calculated by the SCC AGC system and communicated electronically to the Facility via the SCADA System.

“Agreement” shall have the meaning set forth in the introductory paragraph.

“Ancillary Services” means any service associated, directly or indirectly, with the reliable generation and/or transmission of energy from the Facility from time to time, including but not limited to: operating reserves, ramp capability, reactive supply, reactive supply capability, voltage control, voltage control capability, and any rights to compensation for any of these services, that the Facility is capable of providing. “Ancillary Services” also includes any other identified as an “ancillary service” or “other ancillary service” in the Transmission Tariff.

“Applicable Law” means all laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Facility, now in effect or hereafter enacted, including amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards and/or like actions.

“Approvals” means all approvals, authorizations, consents, filings, licenses, orders, Permits or similar actions by any Governmental Authority, the Transmission Provider or Market Operator, required to be obtained by Seller to develop, construct, operate, and maintain the Facility as contemplated by this

Agreement.

“**Back-Up Metering**” shall have the meaning set forth in Section 5.3(B).

“**Balancing Authority**” means the system of electrical generation, distribution and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

“**Business Day**” means any Day that is not a Saturday, a Sunday, or a NERC recognized holiday.

“**Capacity Shortfall Damages**” shall have the meaning set forth in Section 4.7.

“**Cash Collateral**” shall have the meaning set forth in Section 11.3(A)(2).

“**Change in Law**” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, order or treaty; (b) any repeal of or other change in any law, rule, regulation, order or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

“**Change in Tariff**” means any action by the U.S. government taking effect after the Effective Date that (a) increases the ad valorem rate of an existing tariff applicable to the Facility equipment that is assessed or imposed on the importer of the Facility equipment, (b) implements a new import tariff or import duty of any type applicable to the Facility equipment, or (c) commences an investigation by a federal Governmental Authority for antidumping duties, countervailing duties, or similar import tariffs, customs, duties, price supports or similar Taxes or fees.

“**Change of Control**” means the occurrence of any one of the following events with respect to Seller: (a) a transfer that results in Ultimate Parent ceasing to own, directly or indirectly through one or more entities more than fifty percent (50%) of the ownership interests in Seller, excluding (for purposes of this clause (a)) any ownership or equity interests held in connection with a tax equity investment in the Facility; or (b) a sale or conveyance of any direct or indirect ownership interest such that Ultimate Parent is no longer in control, either directly or indirectly through one or more intermediaries, of Seller; *provided however*, that a Change of Control shall not be deemed to have occurred as a result of: (i) transactions exclusively among Affiliates of Seller or any of its direct or indirect subsidiaries, (ii) any exercise by the Facility Lender of its rights and remedies under the Financing Documents, including foreclosure on, deed, assignment or transfer in lieu of foreclosure, or similar acquisition or transfer of any equity or ownership interests in Seller, its Affiliates or the Facility by any Facility Lender or secured party, (iii) the sale or issuance of equity or other ownership interests (or the change of economic and/or voting rights) by Seller or its Affiliates to a Facility Lender (or the subsequent transfer, assignment, or acquisition of such interest), including pursuant to any tax equity investment transaction, (iv) a direct or indirect transfer or assignment to, or acquisition by, any Person provided that following such transfer, assignment, and/or acquisition both (x) an Affiliate of Seller owns, directly or indirectly, at least ten percent (10%) of the equity or ownership interests of such Person, and (y) an Affiliate of Seller provides asset management services in connection with the Facility, or (v) any direct or indirect transfer or assignment to, or acquisition by, a Permitted Transferee of, or other ownership interest in Seller. Without limiting the foregoing, and for the avoidance of doubt, a Change of Control of Seller will be deemed not to have occurred so long as Ultimate Parent remains the direct or indirect owner of at least fifty percent (50%) of the ownership or equity interests of Seller, excluding any ownership or equity interests held in connection with a tax equity investment in the Facility.

“**COD Conditions**” means all of the requirements that must be satisfied by Seller as a prerequisite to achieving Commercial Operation. The COD Conditions are set forth in Section 4.5(C)(2).

“**COD Delay**” shall have the meaning set forth in Section 12.3(A).

“**COD Notice**” shall have the meaning set forth in Section 4.5(A).

“**Commercial Operation**” means the period beginning on the Commercial Operation Date and continuing through the balance of the Term.

“**Commercial Operation Date**” or “**COD**” shall have the meaning set forth in Section 4.5(C)(1).

“**Commercial Operation Year**” or “**COY**” shall mean the twelve (12) month period following the prior Commercial Operation Year. For clarity, the first COY shall mean the period starting at 12:01 a.m. on the Commercial Operation Date and ending at 11:59 pm on the last Day of the calendar month in which the first anniversary of COD occurs.

“**Commercially Reasonable**” or “**Commercially Reasonable Efforts**” means, with respect to any action to be taken or attempted by a Party hereunder, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action, and the competitive environment in which such action occurs.

“**Commissions**” means each of the NMPRC and PUCT.

“**Committed Energy**” from the Facility for each Commercial Operation Year is set forth on Exhibit J – Contract Price; Committed Energy hereto.

“**Compliance Cap**” shall have the meaning set forth in Section 7.3(A).

“**Confidential Information**” shall have the meaning set forth in Section 20.18(A).

“**Construction Contracts**” means contracts required for the engineering, procurement, construction, acquisition, manufacture, delivery and installation of the Facility.

“**Construction Event of Default**” shall have the meaning set forth in Section 12.1.

“**Construction Milestones**” means the dates set forth in Exhibit B – Construction Milestones.

“**Contract Price**” shall have the meaning set forth in Exhibit J – Contract Price; Committed Energy.

“**Costs**” means, with respect to a non-defaulting Party, brokerage fees, breakage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in terminating any arrangements entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement.

“**Credit Rating**” of any person or entity means the lowest rating assigned to such person or entity’s long-term debt or deposit obligations (unenhanced by third-party support) by Standard & Poors and Moody’s. If such person or entity has no outstanding long-term debt or deposit obligations, or if no rating is assigned to such obligations, “Credit Rating” shall mean the lowest general corporate credit rating or long-term issuer rating assigned to such person or entity by Standard & Poors or Moody’s.

“**Day**” means a calendar day.

“**DC**” shall have the meaning set forth in Section 1.1.

“**Deemed Energy**” shall have the meaning set forth in Schedule 8.4(C).

“**Delivery Term**” means the period of time commencing on the Commercial Operation Date and continuing through the end of the Term.

“**Designation Approval Date**” shall have the meaning set forth in Section 6.1(A).

“**Dispute**” shall have the meaning set forth in Section 13.1(A).

“**Dispute Notice**” shall have the meaning set forth in Section 13.1(A).

“**Economic Curtailment**” means (a) any curtailment with the intended purpose of achieving economic savings by not purchasing Solar Energy available from the Facility, or (b) any curtailment resulting from EPE’s economic bidding into California ISO’s Western Energy Imbalance Market or any other regional market.

“**Effective Date**” shall have the meaning set forth in the introductory paragraph.

“**Electric Metering Devices**” means revenue quality meters, metering equipment and data processing equipment used to measure, record and transmit data with respect to the Solar Energy, including metering current transformers and metering voltage transformers. The Electric Metering Devices must be capable of storing five-minute revenue quality meter data for transmission to, and retrieval by, EPE.

“**Eligibility Conditions**” shall have the meaning set forth in Section 7.3(F).

“**Emergency Condition**” means any condition or situation that in the judgment of EPE and implemented by EPE on a nondiscriminatory basis, Seller or Transmission Provider (i) endangers or might endanger life or property; (ii) adversely affects or might adversely affect the reliability of the Transmission Provider’s System or its ability, or the ability of any other entity associated with the interconnected transmission system, to maintain safe and reliable electric service or otherwise pose a threat to public safety; or (iii) constitutes an “emergency” under the Interconnection Agreement. Emergency Condition shall include any condition that is considered an “Emergency” as defined by NERC in the Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

“**Energy Shortfall**” shall have the meaning set forth in Section 8.5(B).

“**Energy Shortfall Amount**” shall have the meaning set forth in Section 8.5(B).

“**Energy Shortfall Damages**” shall have the meaning set forth in Section 8.5(B).

“**Environmental Attributes**” means all existing (i) Renewable Energy Credits, (ii) environmental credits, benefits or attributes, (iii) emissions reductions, (iv) avoided emissions and reporting rights for avoided emissions of pollutants to the air, soils or waters, such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), greenhouse gases (such as carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆)) that have been determined by the United Nations Intergovernmental Panel on Climate

Change or by Applicable Law to contribute to the threat of climate change; (v) avoidances (including emission rate credits), offsets, allowances and green tags, and (vi) zero-emission electricity credits, that are attributable to the Facility during the Term and/or the Solar Energy or other Product hereunder, recognized by Applicable Law, including any rights to compensation therefor. Environmental Attributes do not include Tax Benefits.

“**Environmental Attribute Deficit Damages**” shall be as defined in **Section 7.3(D)**.

“**Environmental Attribute Deficit**” means, for any period of determination, any deficit or shortfall in Environmental Attributes that were registered and transferred to, or retired on the behalf of, EPE in WREGIS as compared to the Solar Energy for such period.

“**Environmental Attribute Shortfall**” shall be as defined in **Section 7.3(D)**.

“**Environmental Contamination**” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will materially preclude or interfere with Seller’s ability to perform its obligations hereunder as and when due.

“**EPE**” shall have the meaning set forth in the introductory paragraph.

“**ERO**” means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization. The certified ERO as of the Effective Date is the Western Electricity Coordinating Council (WECC) and SPP RC West.

“**Escrow Account**” shall have the meaning set forth in **Section 11.3(A)(2)**.

“**Event of Default**” shall, collectively mean any Construction Event of Default, Operational Event of Default, or EPE Event of Default.

“**Excess Energy**” means all Solar Energy generated by the Facility in any Commercial Operation Year in excess of one hundred ten percent (110%) of the Committed Energy for such Commercial Operation Year.

“**Excused Hours**” means, in any Commercial Operation Year, those hours during which Seller is unable to schedule or deliver Solar Energy to EPE as a result of (a) any curtailment as provided in **Section 8.4** (but only to the extent such curtailment was not the result of Seller’s failure to perform hereunder or under the Interconnection Agreement, or Seller’s failure to observe Good Utility Practices), (b) Force Majeure; (c) a Transformer Failure, or (d) EPE’s failure to perform its obligations under this Agreement.

“**Expected Nameplate Capacity**” shall be as stated in **Recital B**.

“**Facility**” means Seller’s electric generating facilities, associated balance of plant, parts, fixtures and equipment, and all equipment necessary to interconnect to the Transmission Provider’s System and to deliver the Product subject to this Agreement, as further described in **Exhibit C - Facility Description**, including Seller’s rights to the Site and improvements, and other tangible and intangible assets, contract rights, Permits, easements, rights of way, surface use agreements and other interests or rights in real estate, owned or used for construction, operation, maintenance of the foregoing, and generation and delivery of the Product.

“**Facility Debt**” means the obligations of Seller or its Affiliates to any lender or tax equity investor 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 fees or interest due with respect to any of the foregoing.

“**Facility Lender**” means, collectively, any lenders or tax equity investors providing Facility Debt, including any successors or assigns thereof.

“**Federal Power Act**” means the provisions of 16 U.S.C. §791(A) *et seq.* and amendments or supplements thereto.

“**FERC**” means the Federal Energy Regulatory Commission or any successor agency.

“**Financing Documents**” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, equity contribution agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction, back-leverage or permanent debt financing and/or tax equity 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 in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

“**Forced Outage**” means any condition at the Facility that requires the immediate and unplanned removal of the Facility, or at least ten percent (10%) thereof, from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Facility conditions or alarms.

“**Forward Settlement Amount**” means, with respect to the non-defaulting Party, the net Losses and Gains, and Costs, expressed in U.S. dollars, which such Party incurs as a result of a termination of this Agreement in accordance with **Section 12.5(A)** plus all amounts then owed to the non-defaulting Party by the defaulting Party. If the non-defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Forward Settlement Amount shall be zero.

“**Future Environmental Attributes**” means any Environmental Attribute for which the Facility becomes eligible for after the Effective Date and during the Delivery Term. Future Environmental Attributes shall not include any Environmental Attributes or Product in existence as of the Effective Date, Tax Benefits, or transmission payments.

“**Gains**” means, with respect to a non-defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed to be the gain (if any) to such non-defaulting Party represented by the difference between the present value of the payments or deliveries required to be made during the remaining Term and the present value of the payments or deliveries that would be required to be made under a transaction(s) replacing this Agreement.

“**Generation Limit**” means the lesser of the (i) Nameplate Capacity and (ii) the power transfer limit set forth in the Interconnection Agreement.

“Good Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the type, similar size and location to the Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known (or reasonably should have been known) at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; and/or any court or governmental tribunal. By way of example only, “Governmental Authorities” include, but are not limited to NERC, the ERO, the Market Operator (if any), the Commissions, the Transmission Provider and FERC, and successor organizations.

“Hazardous Material” means any substance, contaminant, chemical, material, gas, or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to public health, public welfare, or the natural environment (including protection of non-human forms of life, land, water, groundwater, and air), including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of Applicable Law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) per- and polyfluoroalkyl substances (vi) radioactive material; (vii) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (viii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (ix) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (x) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (xi) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

“Import Restriction Action” means any import or customs-related action by the U.S. government taking effect after the Effective Date that directly delays, prevents, or prohibits the delivery of Facility equipment procured by Seller, including, without limitation, (i) a U.S. Customs and Border Protection withhold release order, issuance of a CF28 or CF29 instrument, detention or seizure related to the Uyghur Forced Labor Prevention Act, or (ii) any import restriction imposed by the U.S. government on (x) equipment sourced from the country of origin of any Facility equipment, (y) equipment sourced from any supplier, vendor, or manufacturer of any Facility equipment, and/or (z) equipment similar or identical to any Facility equipment, except to the extent any such delay is caused by or attributable to the negligence of Seller or any Person acting on behalf of or at the direction of Seller (including any agent of Seller).

“Indemnifiable Losses” shall have the meaning set forth in Section 17.1.

“Indemnified Party” shall have the meaning set forth in Section 17.1.

“**Indemnifying Party**” shall have the meaning set forth in **Section 17.1**.

“**Interconnection Agreement**” means the separate contract for interconnection of the Facility to the Transmission Provider’s System, as such agreement may be amended from time to time. For purposes of this Agreement, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other agreement required by the Transmission Provider to interconnect the Facility in accordance with the Transmission Tariff.

“**Interconnection Facilities**” means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Facility at the Interconnection Point, along with 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 such facilities, whether owned by Seller, the Transmission Provider or another entity. This equipment is conceptually depicted in **Exhibit C - Facility Description** to this Agreement.

“**Interconnection Point**” means the physical point within the operational authority of the Transmission Provider as specified in the Interconnection Agreement as project [_____/], at which electrical interconnection is made between the Facility and the Transmission Provider’s System in accordance with the Transmission Tariff and the Interconnection Agreement.

“**Investment Grade**” means a Credit Rating of both (a) Baa3 or higher by Moody’s, and (b) BBB- or higher by Standard & Poors.

“**IRA**” means P.L. 117-169 (commonly known as the Inflation Reduction Act of 2022) and any regulations or administrative guidance issued thereunder.

“**Issuer**” means a U.S. bank or, if approved by EPE, a U.S. branch of a foreign bank.

“**ITC(s)**” means any investment tax credits applicable to the Facility pursuant to 26 U.S.C. §48 or 26 U.S.C. §48E, as applicable, as in effect as of the Effective Date and as administered and interpreted under Applicable Law as of the Effective Date.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Lender Consent**” shall have the meaning set forth in **Section 18.1(A)**.

“**Letter of Credit**” shall have the meaning set forth in **Section 11.3(A)(1)**.

“**Liquidated Delay Damages**” shall have the meaning set forth in **Section 12.3(A)**.

“**Losses**” means, with respect to the non-defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term, determined in a commercially reasonable manner, which economic loss (if any) will be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments or deliveries required to be made under this Agreement and the present value of the payments or deliveries that would be required to be made under transactions replacing this Agreement, each of which shall be calculated for the remaining Term of the Agreement. If EPE is the non-defaulting Party, its economic losses will include the cost of replacing the Environmental Attributes lost as a result of such termination.

“**Maintenance Schedules**” shall have the meaning set forth in Section 10.2(A).

“**Market Event**” shall have the meaning set forth in Section 5.2.

“**Market Operator**” means the entity that instructs market participants and/or generators to regulate generation assets (including the Facility) within any energy market in which EPE participates, based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability. If such entity is the Transmission Provider, then “Market Operator” shall mean such entity acting in its capacity as such.

“**Material Adverse Effect**” means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this Agreement.

“**MW**” means megawatt or one thousand (1,000) kW, and “**MWh**” means megawatt hours or one thousand (1,000) kWh.

“**Nameplate Capacity**” of the Facility means the sum of the designed maximum outputs of each Solar Unit comprising the Facility, as designated by the manufacturer, and as enumerated the recitals to this Agreement.

“**NERC**” means the North American Electric Reliability Council or any successor organization.

“**Network Load**” has the meaning provided in Network Service Provider’s Transmission Tariff.

“**Network Resource**” has the meaning provided in Network Service Provider’s Transmission Tariff.

“**Network Service Provider**” means EPE operating under and in accordance with its Transmission Tariff.

“**NMPRC**” means the New Mexico Public Regulation Commission or any successor agency.

“**Notice of Proposed Third Party Sale**” shall have the meaning set forth in Section 19.3(C).

“**NSP Approvals**” shall have the meaning set forth in Section 6.1(A).

“**Offeror**” means the applicable Person, whether Seller or an Affiliate of Seller, proposing to enter into a transaction set forth in a Proposed Sale Notice with a third party.

“**Operating Committee**” means one Representative and one alternate each from EPE and Seller, pursuant to Section 10.7.

“**Operating Procedures**” means those procedures governing operation of the Facility as approved by the Operating Committee pursuant to Section 10.7, and as may be amended or revised by the Operating Committee from time-to-time.

“**Operating Records**” means the final versions of all agreements associated with the Facility, operating logs, blueprints for construction, operating manuals, test reports, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility.

“**Operational Event of Default**” shall have the meaning set forth in Section 12.2.

“**Park Potential**” means the number of MW that depicts Seller’s real time calculation of the Potential Energy capable of being provided by the Facility to EPE at the Point of Delivery. Park Potential shall be calculated using the best-available data obtained through commercially reasonable methods, and shall be dependent upon measured solar irradiance, power curves, Solar Unit availability, and derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Potential Energy at the Point of Delivery. Park Potential should be provided to EPE in real time through EPE’s SCADA System in accordance with the AGC Protocols. Park Potential shall remain within a measured difference of plus or minus two percent (2%) between the metered Solar Energy and Park Potential, during periods when generation is not curtailed.

“**Party**” and “**Parties**” shall have the meanings set forth in the introductory paragraph.

“**Permit**” means all applicable construction, land use, air quality, emissions control, environmental, protected species, and other permits, licenses, and approvals from any Governmental Authority for construction, ownership, operation and maintenance of the Facility.

“**Permitted Extensions**” shall have the meaning set forth in Section 12.3(B).

“**Permitted Lien**” means any of the following: (i) liens for the benefit of a Lender, (ii) inchoate liens that arise by operation of law which are associated with obligations that are not yet due and payable; (iii) liens cured or removed within thirty (30) Days after their incurrence; and (iv) liens incurred in the ordinary course of business in connection with worker’s compensation, unemployment insurance, social security and other employment related laws.

“**Permitted Transferee**” means any Person that (i) is a Qualified Operator; and (ii) individually or together with its Affiliates has a consolidated net worth of at least One Hundred Million Dollars (\$100,000,000).

“**Person**” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association, or Governmental Authority.

“**PI System**” means the “plant information” system for the Facility.

“**Point of Delivery**” means the physical point within the operational authority of Transmission Provider at which Seller makes available and delivers Solar Energy and Ancillary Services to EPE. The Point of Delivery is specified in Article 3 and in Exhibit C - Facility Description.

“**Potential Energy**” for any period of time means the MWh of energy that the Facility is actually capable of delivering to the Point of Delivery, by virtue of the Park Potential during such period; provided the maximum net instantaneous output that the Facility shall be deemed to be able to deliver to the Point of Delivery, for purposes of determining the Potential Energy shall not exceed the Generation Limit.

“**PRC/PUC Approval**” means each final order or other regulatory determination from either or both of the PUCT or the NMPRC, as determined by EPE in its sole discretion, required in connection with EPE’s execution and performance under the Agreement.

“**Product**” means the Solar Energy, Environmental Attributes and Ancillary Services arising from or related to the Facility.

“**Proposed Purchase End Date**” shall have the meaning set forth in Section 19.3(C).

“**Proposed Purchase Notice**” shall have the meaning set forth in Section 19.3(B).

“**Proposed Sale Notice**” shall have the meaning set forth in Section 19.3(A).

“**PTC(s)**” means production tax credits under 26 U.S.C. §45 or the technology-neutral clean electricity production tax credits under 26 U.S.C. §45Y, as the same may be amended from time to time, and any successor provisions for which the Facility or any portion thereof qualifies.

“**PUCT**” means the Public Utility Commission of Texas or any successor agency.

“**Qualified Operator**” means a Person that (a) has operated, for a period of at least five (5) years, utility-scale solar generating facilities in North America, of at least 500 MW nameplate capacity in aggregate with at least one facility that has at least 100 MW nameplate capacity; and (b) maintains an operating staff consisting of personnel with comparable experience in the operation and maintenance of utility-scale solar generating facilities similar to the Facility.

“**Rating Agency**” means any of S&P, Moody’s, or Fitch.

“**Reduced Capacity**” means, as of the determination date, the difference between the Expected Nameplate Capacity and the Nameplate Capacity.

“**Renewable Energy Credits**” or “**RECs**” means the right to all non-energy attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the Solar Energy and other Product generated by or received from the Facility, including environmental air quality credits, tags and allowances created by Applicable Law by virtue of the Facility’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not necessarily limited to rights eligible for registration, trading and/or use under any current or future registration program.

“**Representatives**” shall mean a Party’s staff, agents, employees, directors, officers, consultants, auditors, and actual or potential Facility Lenders, equity investors and purchasers, including tax credit purchasers.

“**Required Amount**” shall have the meaning set forth in Section 11.1(A).

“**Revenue Meter**” means the revenue meter, or meters, for the Facility.

“**SCADA System**” means supervisory control and data acquisition.

“**Scheduled Commercial Operation Date**” or “**Scheduled COD**” means the date set forth in Article 3, subject to extension as set forth in Section 12.3(B).

“**Security Fund**” shall have the meaning set forth in Section 11.1.

“**Seller**” shall have the meaning set forth in the introductory paragraph.

“**Seller Guaranty**” shall have the meaning set forth in Section 11.3(A)(3).

“**Seller Affiliate**” means [_____], a [_____] [_____].

“**Site**” means the parcel of real property on which the Facility will be located, including any easements, rights of way, surface use agreements and other interests or rights in real estate necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in **Exhibit C - Facility Description** to this Agreement.

“**Solar Energy**” means all electric energy generated by the Facility and delivered to EPE at the Point of Delivery during the Term, including all Test Energy and any Excess Energy purchased by EPE.

“**Solar Units**” means the photovoltaic arrays, mirrors, lenses, tracking devices, and other equipment necessary for the Facility to collect sunlight at the Site and convert it into electricity or thermal energy. The manufacturer and model number of the Solar Units is identified on **Exhibit C – Facility Description**.

“**Station Services**” means electrical power for purposes of operating the Facility, including start-up, shut-down, module adjustment, HVAC or any other purpose.

“**Supply Chain Event**” means any delay in Seller’s performance of its obligations hereunder arising out of any Change in Tariff or Import Restriction Action applicable to the equipment or merchandise procured by Seller (or arranged for procurement by Seller) to be used in or for the Facility and that arises after Seller has procured or arranged for the procurement of such equipment or merchandise to be used in or for the Facility.

“**System Control Center**” or “**SCC**” means EPE’s merchant representatives responsible for dispatch of EPE’s generation and capacity resources, including the Facility.

“**Tax Benefits**” means (a) federal, local and state investment and/or production tax credits (including ITCs and PTCs), and any other tax credits or other financial incentives (including grants) which are or will be generated with respect to the construction, ownership, operation, maintenance or other use of any portion of the Facility, (b) any cash payments or outright grants of money provided by a Governmental Authority or non-Governmental Authority in lieu of such tax credits, and (c) depreciation deductions and depreciation benefits, and any other tax benefits arising from the construction, ownership, operation, maintenance or other use of any portion of the Facility.

“**Term**” means the period of time during which this Agreement remains in full force and effect, as further defined in **Article 2**.

“**Test Energy**” means Solar Energy generated by the Facility prior to the Commercial Operation Date.

“**Test Energy Rate**” means an amount equal to fifty percent (50%) of the Contract Price.

“**Transformer Failure**” means a failure for any cause to all or part of the high voltage equipment including the transformers, the associated circuit breakers and any and all other high voltage switchgear and associated equipment; provided, any such failure cannot exceed eighteen (18) months in duration.

“**Transmission Provider**” means collectively those entities owning and/or operating the interconnected transmission system applicable to Seller and the Facility pursuant to a Transmission Tariff, including, as applicable, (i) EPE operating under and in accordance with its Transmission Tariff, and (ii) all entity(s) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Interconnection Point and transmission system.

“Transmission Provider’s System” means the contiguously interconnected electric transmission and sub-transmission facilities, over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

“Transmission Tariff” means the Open Access Transmission Tariff of the Transmission Provider or Network Service Provider, as applicable, as amended from time to time.

“Ultimate Parent” means [_____], a [_____] [_____].

“WREGIS” means the Western Renewable Energy Generation Information System, or its successor.

* * * * *

EXHIBIT B
CONSTRUCTION MILESTONES

Construction

Milestone

Outcome

[Date]

Seller and all required counterparties shall have executed such Construction Contracts as are needed to construct the Facility.

[Date]

Seller and the Transmission Provider shall have executed the Interconnection Agreement.

[Date]

Seller shall have achieved closing on financing for the Facility or provided EPE with proof of financial capability to construct the Facility.

[Date]

The Solar Units and step-up transformer shall have been delivered and installed at the Site.

[Date]

Seller's Interconnection Facilities shall have been constructed, and such facilities are capable of being energized.

[Date]

Start-up testing of the Facility commences.

EXHIBIT C
FACILITY DESCRIPTION

[This Exhibit shall include a description of the Facility and all material components thereof, including map, aerial pictures, one-line diagram, Point of Delivery and (if different) the Interconnection Point.]

The Facility shall be located on the Site and shall be identified as [_____]. Maps and one-line diagrams of the Facility and associated equipment are included as part of this Exhibit.

Facility Address: [_____]

Latitude: [_____] , Longitude: [_____]

Ultimate Parent: [_____]

Facility Operator: [_____]

Interconnection Point: [_____] (*which shall be the same as set forth in Interconnection Agreement*)

Point of Delivery: [_____]

The Facility must include the following specific components and capabilities:

- * communication circuits from the Facility to the SCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required by EPE;
- * equipment and software necessary to receive, accept and react to an AGC signal from EPE's SCADA System and to comply with the AGC Protocols as further specified in **Exhibit I – AGC Protocols; Data Collection; Availability Reporting**, and the Operating Procedures;
- * ramping capability, voltage control (on and off peak) and frequency control pursuant to NERC guidelines/requirements.
- * capability of sending real time data and OPC interface to EPE's PI System;

[Additional Bid and Facility Specific requirements to be added]

Site Map

[To be inserted]

Facility One-Line Diagram

[To be inserted]

EXHIBIT D
NOTICES AND CONTACT INFORMATION¹

If to Seller to:

[_____]
[_____]
[_____]
Attn: [_____]
Email: [_____]
Phone: [_____]

and

[_____]
[_____]
[_____]
Attn: [_____]
Email: [_____]
Phone: [_____]

If to EPE to:

El Paso Electric Company
P.O. Box 962
El Paso, Texas 79960
Attn: General Counsel
Phone: 915-543-0001
Email: epelegal@epelectric.com

and

El Paso Electric Company
P.O. Box 962
El Paso, Texas 79960
Attn: [_____]
Email: [_____]

Federal Tax ID Number: [_____]

Federal Tax ID Number: [_____]

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: [_____]
Phone: [_____]
Email: [_____]

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: General Counsel
Phone: 915-543-0001
Email: epelegal@epelectric.com

Notices Regarding Proposed Commercial Operation Date:

Attn: [_____]
Phone: [_____]
Email: [_____]

Notices Regarding Proposed Commercial Operation Date:

Attn: EPE COD Notices
Email: CODnotices@epelectric.com

Scheduling (Current Day):

Attn: [_____]
Phone: [_____]
Email: [_____]

Scheduling (Current Day):

Attn: Real Time Trading
Phone: 915-543-5808
Fax: 915-543-2204
Email: realtimetrading@epelectric.com

¹ NTD: To be populated

Scheduling (Day-Ahead):

Attn: []
Phone: []
Email: []

Scheduling (Day-Ahead):

Attn: Day Ahead Trading
Phone: 915-543-4036/915-543-2044
Fax: 915-543-2204
Email: dayaheadtrading@epelectric.com

Invoices:

Attn: []
Phone: []
Email: []

Invoices:

Attn:
Phone: 915-543-2055
Email: mktcheckout@epelectric.com

Payments:

Attn: []
Phone: []
Email: []

Payments:

Attn: Accounts Payable
Phone: 915-543-5961
Email: ap@epelectric.com

Wire Transfer:

Bank: []
ABA: []
Acct: []

Wire Transfer:

Bank: []
ABA: []
Acct: []

***Please send an email to cashmanagement@epelectric.com prior to sending wire payment with the purpose of the payment and EPE internal contact to ensure your wire transfer is accurately accounted.*

Credit and Collections:

Attn: []
Phone: []
Email: []

Credit and Collections:

Attn: Claims and Risk Management
Phone: 915-543-2061
Email: []

EXHIBIT E
INSURANCE COVERAGE

Type of Insurance	Minimum Limits of Coverage
Commercial General Liability (CGL) and commercial umbrella	\$5,000,000 per occurrence and \$10,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of “Insured contract” to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

EPE shall be included as an additional insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance. The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall and EPE shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement.

Business Automobile Liability	\$1,000,000 combined single limit (each accident), including all Owned (if any), Non-Owned, Hired and Leased Autos.
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Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation	\$1,000,000 minimum and Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
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[Exhibit E - continued]

Type of Insurance	Minimum Limits of Coverage
Employers Liability	\$1,000,000 each accident for bodily injury by accident, or \$1,000,000 each employee for bodily injury by disease.
Excess Liability	\$10,000,000 general aggregate
Business Interruption insurance	\$2,000,000 general aggregate
Builder's Risk	Replacement value of the Facility.
Sudden and Accidental Pollution	\$1,000,000 each occurrence, pollution coverage on a time element basis which may be included as part of Seller's CGL or commercial umbrella policy.
All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried, which deductible shall be the absolute responsibility of Seller.

Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy

All-Risk Property insurance shall include coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake.

EXHIBIT F
PERMITS

To be added - Bid Specific

EXHIBIT G
FORM OF LETTER OF CREDIT

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No: _____ Date of Issuance: _____

Beneficiary: El Paso Electric Company

Initial Expiration Date: [Must be at least one year after date of issuance]

Applicant:

As the Issuing Bank (“Issuer”), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. _____ (this “Letter of Credit”) in favor of the above-named beneficiary (“Beneficiary”) for the account of the above-named applicant (“Applicant”) in the amount of US\$ _____ (_____ Million U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary’s draft(s) at sight in substantially the form attached hereto as Exhibit “A” (“Sight Draft”), drawn on Issuer and accompanied by this Letter of Credit. All Sight Drafts must be signed on behalf of Beneficiary, and the signator must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will affect payment under this Letter of Credit within five (5) Business Days after presentment of any Sight Draft. Payment shall be made in U.S. Dollars with Issuer’s own funds in immediately available funds.

Issuer will honor any Sight Draft presented in substantial compliance with the terms of this Letter of Credit at the Issuer’s letterhead office, the office located at _____ or any other full-service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

This Letter of Credit is issued pursuant to the provisions of that certain Power Purchase Agreement between Beneficiary and Applicant dated as of _____, 20__ (as the same may have been or may be amended from time to time, the “Agreement”). Notwithstanding any reference in this Letter of Credit to the Agreement or any other documents, instruments or agreements, or references in the Agreement or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered or certified mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary’s address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer’s letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part, and the number of transfers is unlimited. Issuer shall affect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request substantially in the form attached hereto as Exhibit “B.”

Such transfer will be affected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer of this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims which Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: _____
Authorized Signature

EXHIBIT "A"
TO LETTER OF CREDIT

SIGHT DRAFT

Draft Number _____

\$ _____

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of USD
\$ _____ (_____ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [Name of Issuer and address]. Drawn under [Name
of Issuer to be inserted] Standby Letter of Credit No. _____.

Dated: _____

El Paso Electric Company

By: _____
[name and title]

Account: [Applicant to be inserted]

EXHIBIT "B"
TO LETTER OF CREDIT
FORM OF TRANSFER REQUEST

Irrevocable Standby Letter of Credit No. _____

Current Beneficiary:

Applicant:

To: [Name of Issuer] ("Issuer")

The undersigned, as the current "Beneficiary" of the above-referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [insert transferee name and address below]:

From and after the date this transfer request is delivered to Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

Dated: _____

El Paso Electric Company

By: _____

Name: _____

Title: _____

[Notary Acknowledgement]

To be signed by a person purporting to be an authorized representative of Beneficiary and indicating his or her title or other official capacity, and acknowledged by a notary public.

EXHIBIT H
FORM OF GUARANTY

This Guaranty (the "Guaranty"), dated as of [_____] [____], 20[____] (the "Effective Date"), is executed and delivered by [_____] [____], a [_____] [____] ("Guarantor"), in favor of El Paso Electric Company ("Company"), in connection with the performance by [_____] [____], a [_____] [____] ("Seller") of that certain Power Purchase Agreement, dated [_____] [____], 20[____], by and between Seller and Company (as amended, restated, supplemented or otherwise modified from time to time, the "PPA"). Capitalized terms used but not defined herein shall have the meanings set forth in the PPA.

RECITALS

- A. To induce Company to enter into the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.
- B. Guarantor will benefit from the PPA between Company and Seller.

NOW, THEREFORE, in consideration of the foregoing and as an inducement for Company's execution, delivery and performance of the PPA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Company as follows:

AGREEMENT

- 1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:
 - a. The liability of Guarantor under this Guaranty is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the PPA or the pursuit by Company of any remedies which it now has or may hereafter have under the PPA;
 - b. Company may enforce this Guaranty for Seller's failure to meet any of its obligations under the PPA, including upon the occurrence of a default by Seller under the PPA notwithstanding the existence of a dispute between Company and Seller with respect to the existence of a failure or default;
 - c. The obligations of Guarantor under this Guaranty are independent of the obligations of Seller under the PPA and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Seller or any other guarantors and whether or not Seller is joined in any such action or actions;
 - d. Company may, at its election, foreclose on any security held by Company, or exercise any other right or remedy available to Company without affecting or impairing in any

way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Company by Seller have been paid;

- e. Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding: (i) any modification, amendment, supplement, extension, agreement or stipulation between Seller and Company or their respective successors and assigns, with respect to the PPA or the obligations encompassed thereby; (ii) Company's waiver of or failure to enforce any of the terms, covenants or conditions contained in the PPA; (iii) any release of Seller or any other guarantor from any liability with respect to the Obligations or any portion thereof; (iv) any release, compromise or subordination of any real or personal property then held by Company as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto; (v) without in any way limiting the generality of the foregoing, if Company is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit; (vi) Company's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty; (vii) Company's exercise of any other rights available to it under the PPA; (viii) Company's consent to the change, reorganization or termination of the corporate structure or existence of the Seller and to any corresponding restructuring of the Obligations; (ix) any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations; and (x) any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations; and
 - f. Guarantor agrees that upon a demand for payment under this Guaranty, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Seller may allege or assert against Company with respect to the Obligations, including, without limitation, statute of frauds and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Seller may allege or assert against Company (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.
2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to _____ (\$ _____), plus costs of collection with respect to any valid claim(s) made by Company hereunder that are incurred in the enforcement or protection of the rights of Company.
3. Performance; Payment. If any of the Obligations are not performed according to the tenor thereof ("Failure"), Guarantor shall immediately (but in no event later than three (3) Business Days) upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Failure, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct. All sums payable by Guarantor hereunder shall be made in immediately available funds in U.S. Dollars.
4. Term; Satisfaction.

- a. This Guaranty shall continue in full force and effect until the earlier to occur of: (i) the substitution of an alternative form of Security in accordance with the PPA; (ii) the satisfaction of all Obligations of Seller under the PPA; or (iii) the payment by Guarantor, without reservation of rights, of an aggregate amount equal to the maximum liability set forth in Section 2, together with any other amounts required to be paid by Guarantor pursuant to Section 9 hereof.
 - b. Satisfaction by Guarantor of any duty hereunder incident to a particular Failure or the occurrence of any other Failure shall not discharge Guarantor except with respect to the Failure satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full.
5. Bankruptcy. So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Company, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Seller. The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Seller or by any defense which Seller may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal bankruptcy code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.
6. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:
 - a. all set-offs, counterclaims, withholdings or deductions and all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by applicable laws;
 - b. any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;
 - c. any defense based upon an election of remedies by Company;
 - d. any duty of Company to protect or not impair any security for the Obligations;
 - e. any defense based upon promptness, diligence, and any requirement that Company protect, secure, perfect or insure any security interest or lien or any property subject thereto;
 - f. the benefit of any laws limiting the liability of a surety or any other circumstance that limits the liability of or exonerates a guarantor generally or provides any legal or equitable discharge of Guarantor's obligations hereunder;

- g. other than demand for payment, any requirement of notices between Company and Seller including, without limitation, notice of acceptance of this Guaranty, any information regarding Seller's financial condition, and all other notices whatsoever; and
 - h. until all Obligations in Failure have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder.
- 7. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.
- 8. Representations and Warranties. Guarantor represents and warrants to Company as follows:
 - a. Guarantor is a [corporation], duly organized, validly existing, and in good standing under the laws of the state of its [incorporation]. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.
 - b. The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.
- 9. Collection Costs. Guarantor shall pay to Company, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.
- 10. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.
- 11. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.
- 12. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor. Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of Company, which consent may be withheld in its sole discretion. Company shall have the right to assign this Guaranty to any person or entity without the prior written consent of Guarantor; provided, however, that no such

assignment shall be binding upon Guarantor until it receives written notice of such assignment from Company.

13. Governing Law. This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of Texas, without regard to principles of conflicts of laws thereunder that would trigger the application of any other law. All dispute arising out of or related to this Guaranty shall be brought in the state or federal courts located in El Paso, Texas. Guarantor waives any claim or defense that such action or proceeding brought in any such court is an inconvenient forum, any objection to venue with respect to such action or proceeding, and any right of jurisdiction on the account of the place of residence or domicile of the Guarantor.

14. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing, addressed as set forth below, or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth herein. Any such notice, request, consent, or other communication shall either be hand delivered, sent via overnight service with signature required upon receipt, or delivered by electronic mail and shall be deemed to have been received by the close of the Business Day on which it was delivered or transmitted electronically (unless delivered or transmitted after such close in which case it shall be deemed received at the beginning of the next Business Day).

If to Company: El Paso Electric Company
100 N. Stanton St.
El Paso, Texas 79901
Phone: (915) 543-0001
Email: legal@epelectric.com

With a copy to:

El Paso Electric Company
100 N. Stanton St.
El Paso, Texas 79901
Attn: [_____]
Email: [_____]

If to Guarantor: _____

Attn:
Phone: (____) _____
Email:

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to Company as of the Effective Date.

[Name of Guarantor]

By: _____
Name:
Title:

EXHIBIT I
AGC PROTOCOLS; DATA COLLECTION; AVAILABILITY REPORTING

AGC Protocols

1. AGC Communications between EPE and Seller

EPE will receive and send AGC Set-Point and related data over an analog or digital line. The data points covered hereunder, as described below, may overlap data requirements for the Transmission Provider or EPE's applicable forecasting group. Latitude and longitude coordinates for the location of the AGC communications at the Facility are: [_____].

2. AGC Data Points to be sent from Seller to EPE via SCADA

The following data points will be transmitted via SCADA from Seller to EPE and represent Facility level data:

<u>Description</u>	<u>Units</u>
AGC Set-Point (echo)	MW
Actual power	MW
Park Potential	MW
AGC Status	Remote/Local

3. Response times and limitations of Facility in regard to AGC

The following protocols outline the expectations for responding to the AGC Set-Point. Except in the case of the Frequency of Changes, these protocols will be generally bound by the manufacturers' specifications for the equipment that Seller has chosen for the Facility.

a. Range of AGC Set-Point. The range of set point values can be between 0% and 100% of Park Potential.

4. Backup Communications

In the event of an AGC failure, EPE and Seller shall communicate via telephone in order to correct the failure. Seller shall use Commercially Reasonable Efforts to restore AGC control as soon as practical.

DATA COLLECTION

Seller shall install at least two (2) meteorological stations, spaced such that all modules of the facility are located within a 5km maximum radius from a station. Each station shall provide the data points set forth below.

One meteorological tower must be located as close to the geographic center of the Facility as possible, unshaded and unblocked by any Solar Modules. This meteorological tower must measure wind speed, wind direction, ambient air temperature, back of module temperature, barometric pressure, direct irradiance and

plane of array irradiance.

All other meteorological stations must measure direct irradiance, global horizontal irradiance and back module temperature.

At least two months prior to the Commercial Operation Date, Seller shall deliver to EPE a report showing (i) manufacturer and model of all modules, inverters and meteorological instrumentation, and (ii) the latitude and longitude of the center of the solar modules for every inverter and every meteorological station so as to allow EPE to correlate the data EPE receives to each individual station and inverter.

Beginning upon COD, Seller shall transmit and provide to EPE from each meteorological tower the real-time data set forth above, refreshed as frequently as allowed by the SCADA System, not to exceed sixty (60) second intervals.

The data stream from the meteorological towers to EPE must be transmitted to EPE via a dedicated communications link that is separate from the communications link used to transmit the data from the inverters. The data stream must be capable of being transmitted during an outage or any curtailment and must include battery back-up at the meteorological tower and a local source of electricity to power the interconnectivity between the Facility and EPE during such outages and curtailments.

AVAILABILITY REPORTING REQUIREMENTS

Two (2) Days prior to delivery of Test Energy, the availability reporting requirements shall go into effect.

The forecast of available generating capacity for a Day shall be posted by 4:00 AM Mountain Prevailing time ("MPT") the Day prior to each Day. For example, at 4 AM MPT on Monday, an availability schedule is required for Wednesday (midnight to midnight). On Tuesday, the forecast for Thursday, Wednesday the forecast for Friday, and so on. The availability schedule shall be submitted through an availability forecast system as mutually agreed by EPE and Seller. Prior to the Commercial Operation Date, EPE shall provide Seller with the information necessary for Seller to access the chosen availability forecast system.

If any events or circumstances reduce the forecasted availability of the Facility by 10% of Nameplate Capacity or five (5) MW, whichever is lesser, such reduction shall be (1) communicated to the real-time operator via telephone or email with (2) immediate update to the availability schedule in the availability forecast system.

Seller shall pay to EPE any fines and penalties imposed on EPE by the Market Operator to the extent such charges result from Seller's failure submit an accurate and/or timely forecast of available generating capacity for the Facility.

EXHIBIT J
CONTRACT PRICE

Commercial Operation Year	Contract Price (\$/MWh)	Committed Energy (MWh)
1	\$ _____	
2	\$ _____	
3	\$ _____	
4	\$ _____	
5	\$ _____	
6	\$ _____	
7	\$ _____	
8	\$ _____	
9	\$ _____	
10	\$ _____	
11	\$ _____	
12	\$ _____	
13	\$ _____	
14	\$ _____	
15	\$ _____	
16	\$ _____	
17	\$ _____	
18	\$ _____	
19	\$ _____	
20	\$ _____	

EXHIBIT K
FORM OF LENDER CONSENT
CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 20__, is entered into by and among El Paso Electric Company, a Texas corporation (the “Contracting Party”), [_____] , a [_____] [_____] (“Project Company” and “Assignor”) and [_____] , as collateral agent for the Secured Parties (in each case used herein, has the meaning given to “Secured Parties” in the below defined Financing Agreement) (the “Collateral Agent”). Unless otherwise defined herein, all capitalized terms have the meaning given in the Assigned Agreement (as defined below).

RECITALS

A. Project Company intends to develop, construct, install, test, own, operate and use an approximately [_____] facility to be constructed in [_____] , [_____] (the “Project”).

B. The Contracting Party and Project Company have entered into that certain Power Purchase Agreement, dated as of [_____] (as amended by the terms hereof and as may be further amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof ,the “Assigned Agreement”).

C. In order to finance the development, construction, installation, testing, operation and use of the Project, Assignor has entered into that certain [Financing Agreement], dated as of [_____] (as may be amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), by and among the Assignor, the financial institutions from time to time party thereto as lenders and letter of credit issuing banks (collectively, the “Lenders”), the Collateral Agent, and any other agents and persons party thereto, pursuant to which, among other things, such financial institutions have extended commitments to make loans and other financial accommodations to, and for the benefit of, the Assignor.

D. As a condition of the financing under the Financing Agreement, the Assignor has entered into that certain [Security Agreement], dated as of [_____] , with Collateral Agent, among others (as may be amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), pursuant to which Assignor has agreed to assign all of its right, title and interest in, to and under the Assigned Agreement (the “Assigned Interest”) to the Collateral Agent, for the benefit of the Secured Parties, as collateral security for satisfaction of certain secured obligations (the “Secured Obligations”) under the Financing Agreement and the other related financing documents (collectively, and together with the Security Agreements, the “Financing Documents”).

E. It is a condition precedent to the Lenders’ obligations under the Financing Agreement that Contracting Party shall have entered into this Consent with the Project Company and Collateral Agent.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. CONSENT TO ASSIGNMENT; ACKNOWLEDGMENTS.

(a) The Contracting Party consents to an assignment of all of Assignor's rights and obligations under the Assigned Agreement by such Assignor to the Collateral Agent as collateral pursuant to the Financing Documents.

(b) The Contracting Party acknowledges that each Lender is a "Facility Lender" under and as defined in the Assigned Agreement.

2. LIMITATIONS ON ASSIGNMENT.

(a) The Collateral Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of the Assignor under the Assigned Agreement, subject to applicable conditions, including notice and cure periods, provided in the Assigned Agreement and as set forth herein. Upon receipt of a complying notice from the Collateral Agent, the Contracting Party agrees to accept such exercise and cure by the Collateral Agent if timely made by the Collateral Agent under and otherwise consistent with the terms of the Assigned Agreement and this Consent. Upon receipt of the Collateral Agent's written instructions and to the extent allowed by law, the Contracting Party agrees to make, directly to such account, as the Collateral Agent may direct the Contracting Party in writing from time to time, all payments to be made by Contracting Party to the Assignor under the Assigned Agreement from and after the Contracting Party's receipt of such instructions, and Assignor consents to any such action. The Contracting Party shall have no liability to the Assignor under the Assigned Agreement or this Consent for directing such payments to the Collateral Agent in accordance with this Section 2(a). As of the date hereof, such written instructions are as follows:

With respect to Project Company:

[_____]
Bank: [_____]
ABA: [_____]
Account Name: [_____]
Account Number: [_____]

(b) The Contracting Party agrees to deliver duplicates or copies of all notices of Events of Default (as defined in the Assigned Agreement) by the Assignor delivered by the Contracting Party under or pursuant to the Assigned Agreement to the Collateral Agent in accordance with the notice provisions of this Consent. In the event of an Event of Default by an Assignor in the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall not terminate the Assigned Agreement until it first gives written notice of such Event of Default to the Collateral Agent and affords the Collateral Agent, (i) if such Event of Default is the failure to pay amounts to the Contracting Party which are due and payable under the Assigned Agreement, a period of thirty (30) days from the later to occur of (y) the receipt of such notice and (z) the expiration of the Assignor's cure period under the Assigned Agreement, if any, or (ii) with respect to any other Event of Default, except those identified below as not being curable, ninety (90) days from the later to occur of (y) the receipt of such notice and (z) the expiration of the Assignor's cure period under the Assigned Agreement, if any.

(c) If (x) possession of the Project is necessary to cure such Event of Default or (y) if the Event of Default can only be cured by the Assignor and is not curable by the Collateral Agent, and the Collateral Agent thereafter commences foreclosure proceedings or any other proceedings necessary to take possession of the Project, the Collateral Agent or its successor(s), assignee(s) and/or designee(s) will be allowed a reasonable period to complete such proceedings and cure the Event of Default (not to exceed a total of one hundred eighty (180) days from the Collateral Agent's receipt of notice of such Event of Default as provided per subsection (b) above), provided that, once commenced, the Collateral Agent, or its successor(s), assignee(s) and/or designee(s), shall pursue such proceedings with due dispatch. Further, if the Event of Default can only be cured by the Assignor and is not curable by the Collateral Agent, such as the insolvency, bankruptcy, general assignment for the benefit of creditors, or appointment of a receiver, trustee, custodian or liquidator of such Assignor or its properties, and Collateral Agent or its successor(s), assignee(s) and/or designee(s) satisfies the requirements of the Assigned Agreement with respect to a Qualified Operator (or has retained a Qualified Operator), the Collateral Agent shall be entitled to assume the rights and obligations of such Assignor under the Assigned Agreement and provided such assumption occurs, the Contracting Party shall not be entitled to terminate the Assigned Agreement or suspend its performance thereunder based on such Event of Default. If during any of the foregoing periods, the Collateral Agent or its successor(s), assignee(s) and/or designee(s) is prohibited by any court order or bankruptcy or insolvency proceedings of the Assignor from curing the Event of Default or from commencing or prosecuting such proceedings, the foregoing time periods shall be extended by the period of such prohibition (not to exceed one hundred twenty (120) days from the Collateral Agent's receipt of notice of such non-curable Default) as provided per subsection (b) above; provided that the Collateral Agent or its successor(s), assignee(s) and/or designee(s) is pursuing relief from such prohibition with due dispatch, diligently pursues such cure to completion and continues to perform any payment obligations under the Assigned Agreement. The Contracting Party shall recognize the Collateral Agent or its designee(s) or assignee(s) as the applicable party under the Assigned Agreement; provided that the Collateral Agent or its designee(s) or assignee(s) assumes the obligations of the Assignor under the Assigned Agreement, including, without limitation, such Assignor's obligation to provide the applicable Delivery Term Security as required under the Assigned Agreement.

(d) In the event that the Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if the Collateral Agent shall so request in writing to the Contracting Party within ten (10) Business Days of such rejection, the Contracting Party will, subject to any required regulatory approval, execute and deliver to the Collateral Agent a new agreement, which shall be on the same terms and conditions as the original Assigned Agreement, for the remaining term of the original Assigned Agreement before giving effect to such rejection; provided, however, that the Collateral Agent, prior to or concurrently with such replacement agreement becoming effective shall (a) pay all sums that would, at the time of the execution and delivery thereof, be due under such Assigned Agreement but for such rejection or termination, and (b) otherwise agree in writing to cure any defaults under such Assigned Agreement that are capable of being cured.

(e) In the event that the Collateral Agent or its designee(s) or assignee(s) succeed to the Assignor's interest under the Assigned Agreement, the Collateral Agent or its designee(s) or assignee(s) shall cure any then-existing payment and performance defaults and Events of Default under the Assigned Agreement, except any performance defaults and Events of Default of the Assignor itself, which by their nature are not susceptible of being cured because they are specific to such Assignor (e.g. bankruptcy of such Assignor). The Collateral Agent and its designee(s) or assignee(s) shall have the right to assign its interest in the Assigned Agreement to a person or entity to whom the Assignor's interest in the Project is transferred and provided such transferee (i) assumes and agrees in writing to be bound by the obligations of the Assignor under the Assigned Agreement and furnishes a copy of the assignment or transfer document to Contracting Party; (ii) demonstrates reasonably to Contracting Party that it meets the

requirements of a Qualified Operator or has retained, prior to such assumption, a Qualified Operator to operate the Project; and (iii) if applicable, shall have complied with the obligations to provide applicable security in conformance with the Assigned Agreement. Upon such assignment, the Collateral Agent and its designee(s) or assignee(s) (including its agents and employees) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

3. REPRESENTATIONS AND WARRANTIES. Contracting Party hereby represents and warrants to the Collateral Agent that as of the date of this Consent:²

(a) It (i) is duly formed and validly existing under the laws of the State of Texas, and (ii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance of this Consent and the Assigned Agreement have been duly authorized by all necessary action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(c) to Contracting Party's actual knowledge, this Consent and the Assigned Agreement are in full force and effect;

(d) the Assigned Agreement has not been amended;

(e) the Assigned Agreement has not been assigned by the Contracting Party;

(f) this Consent and the Assigned Agreement have been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(g) there is no litigation, arbitration, investigation or other proceeding pending for which the Contracting Party has received service of process or, to Contracting Party's actual knowledge, threatened against Contracting Party relating solely to this Consent and the Assigned Agreement which could have a material adverse effect on its ability to perform its obligations under this Consent or the Assigned Agreement;

(h) the execution, delivery and performance by it of this Consent and the Assigned Agreement, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material requirements of law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

² Note: EPE will conduct customary due diligence prior to making any of these representations.

(i) neither Contracting Party nor, to Contracting Party's actual knowledge, any other party to the Assigned Agreement, is in default of any of its obligations thereunder, and no disputes exist between Contracting Party and the Assignor thereunder;

(j) to Contracting Party's actual knowledge, no Force Majeure Event exists under the Assigned Agreement; and

(k) all conditions precedent to the obligations of Contracting Party and Assignor under the Assigned Agreement as set forth in the Assigned Agreement have been satisfied.

4. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand-delivered, (b) upon telephonic verification of receipt if sent by facsimile, (c) upon confirmation of receipt if sent by email and (d) if otherwise delivered, upon the earlier of receipt or five (5) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to Contracting Party:

El Paso Electric Company
P.O. Box 982
El Paso, Texas 79960
Attn: General Counsel
Telephone: (915) 543-0001
Email: epelegal@epelectric.com

If to Collateral Agent:

[]
[]
[]
[]
Attn: []
Email: []

If to Assignor:

[]
[]
[]
[]
Attn: []
Email: []

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving written notice to the other parties in the manner set forth above.

5. ASSIGNMENT, TERMINATION, AMENDMENT. This Consent shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the

obligations under any of the Financing Agreement). Contracting Party agrees to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) the Assignor, the Collateral Agent or any of its respective successors, transferees or assigns. No amendment or variation of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. No waiver of any provisions of this Consent shall be effective unless in writing and signed by the party waiving any of its rights hereunder. Assignor and Collateral Agent shall provide written notice to Contracting Party upon the expiration or termination of the Financing Agreement.

6. GOVERNING LAW. This Consent shall be governed by the laws of the State of Texas, excluding any law related to conflict or choice of law which would result in the application of any law to this Consent other than the laws of the State of Texas. THE FEDERAL AND STATE COURTS SITUATED IN THE STATE OF TEXAS SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTES WITH RESPECT TO THIS CONSENT WITH CONTRACTING PARTY, EACH ASSIGNOR, AND THE COLLATERAL AGENT IRREVOCABLY CONSENTING TO THE JURISDICTION THEREOF FOR ANY ACTIONS, SUITS, OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONSENT.

7. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement and each executed counterpart delivered by facsimile or other electronic means shall have the same force and effect as an original instrument.

8. SEVERABILITY. In case any provision of this Consent or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

9. ACKNOWLEDGMENTS AND AGREEMENTS. The Assignor, by its execution hereof, acknowledges and agrees that none of the execution of this Consent, the performance by Contracting Party of any of the obligations of Contracting Party hereunder, the exercise of any of the rights of Contracting Party hereunder, nor the acceptance by Contracting Party of performance of the Assigned Agreement by any party other than such Assignor shall (i) release such Assignor from any obligation of such Assignor under the Assigned Agreement, (ii) constitute a consent by Contracting Party to, or impute knowledge to Contracting Party of, any specific terms or conditions of any of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (iii) constitute a waiver by Contracting Party of any of its rights under the Assigned Agreement.

10. COLLATERAL AGENT. All references to the Collateral Agent contained herein refer to the Collateral Agent not acting in its individual capacity but solely as Collateral Agent under the Financing Agreement.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

EL PASO ELECTRIC COMPANY,
a Texas corporation
as Contracting Party

By: _____
Name:
Title:

[PROJECT COMPANY],
a [_____] [_____]]
as Assignor

By: _____
Name:
Title:

[COLLATERAL AGENT],
as Collateral Agent

By: _____
Name:
Title:

EXHIBIT L
METHODOLOGY FOR ADJUSTING COMMITTED ENERGY

In determining Energy Shortfall Damages under **Section 8.5** or whether a default by Seller has occurred under **Section 12.2(E)**:

A. Periods when the Facility is incapacitated in whole or in part due to Excused Hours (excluding curtailment, which is discussed below) shall be excluded from the calculation.

For example, if the Facility is 50% unavailable during the entire month of March 2029 due to Force Majeure, (i) the Committed Energy required from Seller for the relevant Commercial Operation Year shall be reduced by []%, as set forth in **Exhibit M** for the month of March, and (ii) the output of the Facility for the month of March shall be excluded in determining the quantity of Solar Energy delivered by Seller during the relevant Commercial Operation Year.

B. Periods of curtailment that are not the result of an Economic Curtailment shall be excluded from the calculation.

For example, if the Facility is off-line for 15 days in September 2029 due to a maintenance outage on the transmission system beyond the Point of Delivery, the Committed Energy required from Seller for the relevant Commercial Operation Year shall be reduced by []%, which reflects the 50% reduction in the percentage of estimated expected monthly generation in a calendar year for the month of September, as set forth in **Exhibit M**.

C. Energy generation foregone due to Economic Curtailments shall be deemed to have been delivered to EPE.

D. The Committed Energy for the relevant Commercial Operation Year shall be multiplied by the ratio of the actual global horizontal irradiance for such Commercial Operation Year to the annual expected global horizontal irradiance for the Facility. Seller represents and warrants that the annual expected global horizontal irradiance for the Facility is [] kWh/m²/yr (+/- 1%).³

For example, if during the sixth Commercial Operation Year, the Facility actually generates [] MWh of Solar Energy but the actual solar irradiance for such Commercial Operation Year was [*an amount less than annual expected global horizontal irradiance set forth above*] kWh/m², the Committed Energy for such Commercial Operation Year (assuming no other adjustments under paragraphs A-C above) shall be reduced from [] MWh to [] MWh [*to reflect the reduced actual solar irradiance as compared to the expected solar irradiance*] for purposes of determining a Seller Event of Default by Seller.

The actual solar irradiance for a Commercial Operation Year shall be determined by the pyranometer readings at the Site (or from Vaisala), for any periods when the pyranometer at the Site is inoperable). Seller shall provide to EPE upon request all pertinent Vaisala data and on-site pyranometer data for any Commercial Operation Year.

³ Note to Form – Bidder to provide supporting documentation for EPE’s review and verification.

EXHIBIT M
EXPECTED MONTHLY GENERATION PROFILE

Calendar Month	Percent of Annual Generation
January	[]%
February	[]%
March	[]%
April	[]%
May	[]%
June	[]%
July	[]%
August	[]%
September	[]%
October	[]%
November	[]%
December	[]%
Total	100 %

EXHIBIT N

METER AND COMMUNICATIONS REQUIREMENTS

These meter requirements shall apply to all Electric Metering Devices.

- Electric Metering Devices shall meet requirements set forth in American National Standards Institute (ANSI) C12.1 and 12.20. Current transformers and voltage transformers supplying this meter should meet requirements of IEEE/ANSI C57.13 and ANSI C57.13.6. In addition to meeting these requirements the current transformers should be high accuracy extended range transformers with at least .15% accuracy from 1% to full rating factor. Prior to the purchase of Electric Metering Devices, current transformers and potential transformers and associated communication equipment, Seller must submit relevant information such that EPE can review and verify that the equipment meets EPE requirements.
- No later than ninety (90) Days prior to generating any Test Energy, Seller shall provide to EPE in mutually agreeable format all necessary specifications related to the Electric Metering Devices and/or communication therewith including, but not limited to, the make, model, port configuration, connection assignments, and physical locations.
- EPE may inspect and verify that the equipment was approved and properly installed. In addition, EPE may elect to test the Electric Metering Devices for accuracy, current transformers and potential transformers and verify that the communication circuits to EPE are operational.
- Upon EPE's reasonable prior written notice, Seller shall make reasonable modifications to Seller's metering equipment and configurations in order to ensure accurate telemetering and communication.
- EPE shall have the right to install any telemetering and communication equipment EPE deems reasonably necessary for purposes related to this Agreement. Seller shall, upon prior written notice sufficiently in advance, cooperate with any such installation.
- Electric Metering Devices shall be programmed to, at any time of remote electronic communications and access, provide a time and date stamp of downloaded delivery information.
- Electric Metering Devices shall be programmed to, at any time of manual read of the meter's display, provide the time and date of the information gathered. The Seller shall provide the communication channels for EPE's remote terminal unit and EPE's Itron Enterprise Edition Meter Data Management Agent. The implementation of these communication paths and RTU shall follow EPE's latest standard. The Seller must have these communication paths installed, tested, and functional prior to generating Test Energy.
- EPE shall have the right, via read-only access, and upon prior reasonable written notice to Seller, to independently audit Seller's meters and any records pertaining to the amount of energy generated by the Facility and any associated losses. Any audit shall be performed at the Facility or if applicable, other location within the same state as the Facility which is mutually agreed upon by both EPE and Seller. Records related to such audits, inspections, testing or adjustments shall be maintained and subject to audit by EPE for a period of 24 months. EPE shall further have the right to request and receive in physical or electronic form any and all records or data files related to such

audits, inspections, testing or adjustments.

- Seller shall provide secure and reliable communication from the Electric Metering Devices as follows:
 - DNP output from the meter to EPE's SCC via a remote terminal unit located near the Electric Metering Devices and hardwired from the meter to the remote terminal unit.
 - Time stamped meter register and interval data from the meter to EPE's Itron Enterprise Edition Meter Data Management Agent with servers located in El Paso, Texas. Electric Metering Devices must have an Itron-approved Translation Interface Module to facilitate correct data transmission over this communication path.
 - No later than six (6) months prior to generating Test Energy, Seller shall provide to EPE the issued for construction one-line electrical drawings of the Facility, stamped by a licensed professional engineer, showing the electrical location of the Electric Metering Devices.
 - No later than one hundred twenty (120) days after the Commercial Operation Date, Seller shall provide to EPE the final as-built electric drawings of the Facility, stamped by a licensed professional engineer, showing the electrical location of the Electric Metering Devices.