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Execution Version



**AMENDED AND RESTATED
POWER PURCHASE AGREEMENT**

(Eagle Mountain, Utah)

between

WILLIAMS FIELD SERVICES GROUP, LLC

and

██████████

dated to be effective as of

September 30, 2025



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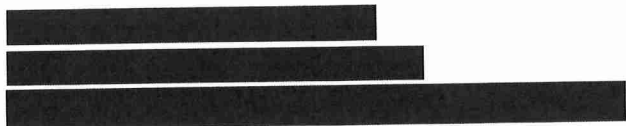
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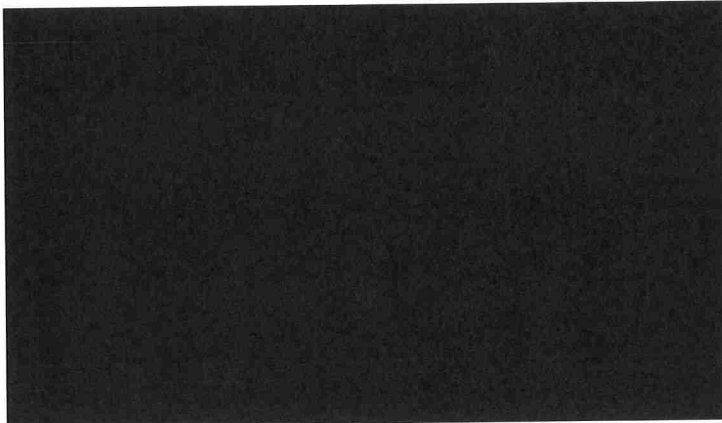
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- Exhibit B-1
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AMENDED AND RESTATED POWER PURCHASE AGREEMENT
(Eagle Mountain, Utah)

This Amended and Restated Power Purchase Agreement (this "Agreement"), dated as of February 6, 2026, but to be effective as of September 30, 2025 (the "Execution Date"), is between [REDACTED] ("Seller"), and [REDACTED] ("Buyer"). Each of Seller and Buyer are referred to in this Agreement as a "Party," and collectively as the "Parties."

RECITALS

1. Buyer desires to self-generate Energy in quantities sufficient to power the Data Center Facilities (as hereinafter defined).
2. Buyer and Seller intend, respectively, to be a Large load customer and Large-scale generation provider, and for this Agreement to be a Private generation contract, as all such terms are defined under Chapter 26.
3. In pursuit of the foregoing, Buyer and Seller entered into that certain Power Purchase Agreement dated as of September 30, 2025 and that certain First Amendment to Power Purchase Agreement dated as of November 20, 2025 (collectively, the "Original PPA"), pursuant to which, among other things, Buyer agreed to engage Seller to design, engineer, develop, construct, install, own, maintain and operate the Generation Facility on the Generation Facility Site (as hereinafter defined) for the purpose of generating Energy to power the Data Center (as hereinafter defined).
4. Consistent with the provisions of Section 7.1(b)(ii) of the Original PPA, Buyer desires to have Seller undertake a GF Design Change by having Seller integrate the BESS (as defined below) into the Generation Facility, and Seller is willing to undertake such GF Design Change.
5. Buyer and Seller now wish to amend and restate the Original PPA in its entirety to address the foregoing GF Design Change and certain other amendments and modifications to the Original PPA, all in accordance with the terms and conditions set forth in this Agreement.

AGREEMENT

In consideration of the foregoing premises and the mutual covenants contained in this Agreement, Buyer and Seller agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Defined Terms

Unless otherwise required by the context in which it appears, terms used in this Agreement have the meanings set forth in this Section 1.1.

"AAA" means the American Arbitration Association.

"Abandonment" means (a) a complete cessation of development, work and operations at or relating to the Generation Facility for one hundred and eighty (180) days by Seller, or Seller's or its Affiliate's



direct or indirect contractors, but only if such cessation is not caused by (i) a Force Majeure Event, (ii) the breach or failure of any of the obligations of Buyer or any of its Affiliates under any of the Transaction Agreements, or Buyer's or its Affiliate's actions or inactions in relation to the development, work and/or operation of the Generation Facility, or (b) the permanent and complete relinquishment of possession and control of the Generation Facility (or any material portion thereof) by Seller; *provided* that any failure to operate the Generation Facility by Seller to the extent due to Buyer's failure to Schedule Required Energy shall not give rise to any Abandonment.

“Acid Rain Program” means the national sulfur dioxide emissions reduction and allowance trading program established pursuant to Title IV of the federal Clean Air Act, 42 U.S.C.

“Actual Availability” means, for each Performance Measurement Period, the value (expressed as a percentage) calculated as follows: (a)(i) the sum of all MWhs of Committed Energy during such Performance Measurement Period which was (A) actually delivered by Seller to the Delivery Point and (B) not delivered but was otherwise capable of being generated and delivered to the Delivery Point and was made available by Seller but not Scheduled or taken by Buyer, *plus* (ii) the sum of all MWhs to the extent in excess of the Committed Energy during such Performance Measurement Period which was Scheduled by Buyer and actually delivered by Seller to the Delivery Point, *plus* [REDACTED]

“Actual Import Tariff Amount” means the actual amount of Import Tariffs, as determined in accordance with Section 7.8.

“Affiliate” means, with respect to a Person, any Person that (a) Controls, directly or indirectly, such Person; (b) is Controlled, directly or indirectly, by such Person; or (c) is under common Control with such Person.

“Agreement” has the meaning set forth in the introductory paragraph of this Agreement.

“Allowed Transaction” means a sale, transfer, consolidation, amalgamation, merger or similar structured transaction of assets or equity or some combination thereof, involving Seller or its Affiliates pursuant to which the value of the Generation Facility represents less than [REDACTED] ([REDACTED]%) of the total consideration being paid by or exchanged between the acquiring entity/buyer to the acquired entity/seller pursuant to such transaction so long as the acquiring entity/buyer is not a Sanctioned Person.

“Alternative Registration” means any permissible regulatory approval with respect to the Gas Lateral Pipeline that would serve as an alternative to Chapter 26 Registration and which would allow, subsequent to the consummation of the Buyout, Seller to (i) maintain ownership of the Gas Lateral Pipeline and (ii) provide gas transportation and supply under the Replacement Agreements at the point of interconnection between the Gas Lateral Pipeline and the Generation Facility.

“Annual CPI Rate” means the Consumer Price Index published by the U.S. Bureau of Labor Statistics for all items in U.S. city average, all urban consumers, not seasonally adjusted.

“Anticipated COD” means the later of (a) [REDACTED], and (b) the date that is 365 days after the date on which all Conditions Precedent other than the Condition Precedent described in Section 2.1(c)(i)



and Section 2.1(c)(ii) have been satisfied, as such Anticipated COD date may be extended pursuant to Section 7.2(b).

“Anticipated Nameplate Capacity” means [REDACTED], being the Generation Facility’s expected generating capacity at an average ambient temperature of [REDACTED]

“Anticipated Tranche 2 COD” means the later of (a) [REDACTED] and (b) the date that is 639 days after the date on which all Conditions Precedent other than the Conditions Precedent described in Section 2.1(c)(i) and Section 2.1(c)(ii) have been satisfied, as such Anticipated Tranche 2 COD date may be extended pursuant to Section 7.2(b).

“Anything of Value” has the meaning set forth in Section 11.2(c).

“Applicable Law” means with respect to a Person, collectively, any federal, state, or local law, treaty, franchise, rule, regulation, standard, order, writ, judgment, injunction, decree, award, or determination of a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its properties are subject.

“Availability Damages” has the meaning set forth in Exhibit F.

“Availability Failure” means the value of the Actual Availability of the Generation Facility is less than the Guaranteed Availability during an applicable Performance Measurement Period.

“Award” means compensation paid for a Condemnation Event, whether pursuant to a judgment, by agreement or otherwise, including, without limitation, any damages and interest.

“Bankrupt” means, with respect to a Person, such Person: (a) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or similar law; (b) has any such petition filed, or any such proceeding or cause of action commenced, against it if such petition, proceeding, or action is not withdrawn, discharged, dismissed, stayed, or restrained within sixty (60) days following the filing or commencement thereof; (c) makes a general assignment of this Agreement for the benefit of its creditors; (d) otherwise becomes bankrupt or insolvent (however evidenced); (e) has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any substantial portion of its property or assets; or (f) admits in writing its general inability to pay its debts as they come due.

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, as amended).

“BESS” means, a battery energy storage system which is anticipated to include Tesla battery megapacks, medium voltage transformers for each megapack, field network enclosures, medium voltage BESS building, MV breakers, relays, 125VDC system, UPS systems, full control system to support the entire BESS, HVAC, networking, fire protection system, and necessary fiber to integrate into the Generation Facility.

“BESS Degradation” has the meaning set forth in Section 7.11(c).

“BESS Meters” means, collectively, the metering and data processing equipment located at each BESS and used by Seller to determine the BESS Net Losses and the registration, recording and transmission of information regarding the BESS Net Losses.



“BOP/EPC Contract” means, collectively, whether one or more, each engineering, procurement, and construction agreement (whether styled as a balance of plant, balance of systems, engineering, procurement and construction, or other agreement) entered into by Seller (or one or more Affiliates of Seller) for the design, engineering, procurement, development and construction of the Generation Facility (including the Facility Infrastructure and the Seller’s Gas Connection) and the Gas Lateral Pipeline.

“BOP/EPC Contractor” means each contractor retained by Seller (or any one or more of its Affiliates) under a BOP/EPC Contract.

“Business Day” means any day except a Saturday, Sunday or a Federal Reserve Bank holiday. With respect to each Party, a Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Central Prevailing Time.

“Buyer” has the meaning set forth in the introductory paragraph of this Agreement.

“Buyer Credit Support” has the meaning set forth in Section 6.2.

“Buyer Credit Support Amount” means as of the Execution Date, [REDACTED] subject to adjustment thereafter pursuant to Section 6.2.

“Buyer Early Termination Right” has the meaning set forth in Section 7.3(c)(ii).

“Buyer Indemnitees” has the meaning set forth in Section 9.4(a).

“Buyer Related Delay Conditions” has the meaning set forth in Section 7.2(b).

“Buyer Required Volume” has the meaning set forth in Section 7.6(g)(i).

“Buyer’s Electric Interconnection Facilities” means those items of equipment (including electrical equipment), machinery, electrical lines and other apparatus, mechanisms and devices for which Buyer shall be responsible pursuant to this Agreement, more fully described in Exhibit G attached hereto, and which are to be engineered, designed, developed, constructed, installed, tested and commissioned by Buyer pursuant to this Agreement for purposes of (i) connecting the Generation Facility to the Data Center Facilities and (ii) enabling the delivery of Required Energy to the Data Center.

“Buyout” has the meaning set forth in Section 2.3(a).

“Buyout Price” means the price calculated in accordance with Exhibit I and payable by Buyer to Seller for a Buyout.

“Capacity” means the output potential an electric generator can produce expressed in kW or MW at a given point in time under normal operating conditions.

“Capacity Rate” has the meaning set forth in Exhibit E.

“Capacity Rate Reduction Amount” has the meaning set forth in Section 7.11(d).



“Cash” means U.S. Dollars.

“Change in Law” means any change in or new addition to any Applicable Law adopted on or after the Execution Date.

“Change in Law Rate Calculation” has the meaning set forth in Section 11.13(a).

“Change in Law Threshold” means \$ [REDACTED] in the aggregate (taking into consideration all Changes in Law during the Term) of all capital expenses and all operating expenses resulting from or anticipated to result from the Change in Law during the Term.

“Change of Control” means any of the following:

(a) A change in the direct or indirect ownership of a Party such that upon the occurrence of such change, more than fifty percent (50%) of the ownership interests in such Party are, directly or indirectly, owned and controlled by one or more Persons that were not Affiliates of such Party immediately prior to such change;

(b) A change in the direct or indirect ownership of a Party such that upon the occurrence of such change, one or more Persons that were not Affiliates of such Party immediately prior to such change have the power, right or authority to direct, or cause the direction of, the management and policies of such Party; or

(c) Any consolidation, amalgamation, merger or similar structured transaction of or with respect to a Party in which such Party is not the continuing or surviving entity; *provided, however,* that notwithstanding the foregoing to the contrary, in no event shall any change or transaction, under any of clauses (a) – (c) in this definition result in a Change of Control if any such change or transaction involves a Party’s Parent or any person or entity upstream of such Party’s Parent, including any transfer of the equity interests in a Party’s publicly traded Parent.

“Chapter 26” means Title 54, Chapter 26 of the Utah Code, as amended from time to time.

“Chapter 26 Registration” has the meaning set forth in Section 2.1(c)

“Claim” has the meaning set forth in Section 9.4(c)(i).

“Code” means the means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute, including the rules or regulations promulgated thereunder, in each case as in effect from time to time. References to sections of the Code shall be construed to also refer to any successor sections.

“Commencement Date” means the first day of the first calendar month immediately following Tranche 1 COD.

“Commercial Operation” means that Seller has satisfied the Commercial Operation Conditions set out in Section 7.4(b).

“Commercial Operation Conditions” has the meaning set forth in Section 7.4(b).



“Committed Capacity” means, prior to the achievement of Tranche 2 COD, the Tranche 1 Committed Capacity, and from and after Tranche 2 COD, the sum of the Tranche 1 Committed Capacity and the Tranche 2 Committed Capacity.

“Committed Energy” has the meaning set forth in Section 7.5(a).

“Compliance Costs” means all out-of-pocket costs and expenses (including both capital expenses and operating expenses) incurred by Seller and paid to Third Parties, and excluding Seller’s internal administrative and staffing costs, in order to modify the Generation Facility, its Metering Facilities, the Facility Infrastructure or the Gas Lateral Pipeline in order to cause them to be in compliance with Applicable Law following a Change in Law, with no mark-ups or return on equity or profit.

“Compliance Costs Estimate” means Seller’s estimate of Compliance Costs for achieving compliance with an applicable Change in Law.

“Condemnation Event” means the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any Applicable Law, including by any change to a Change in Law, or any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking by any Governmental Authority or otherwise pursuant to Applicable Law of (i) as applicable to Buyer, the Data Center Site, or (ii) as to Seller, the Generation Facility Site or any part of the Generation Facility, including, as applicable any part of the Seller’s Gas Connection, whether located on the Generation Facility Site, the Data Center Site or outside of the boundaries of such properties. The transfer of title may be a transfer resulting from the recording of a final order in condemnation, or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending.

“Conditions Precedent” has the meaning set forth in Section 2.1(c).

“Confidential Information” means all non-public, confidential or proprietary information of a Party related to this Agreement, including but not limited to financial information, pricing information, information regarding business activities and operations, business plans, trade secrets, information regarding employees, and other technical and business information, which Buyer or its Representatives and/or Seller or its Representatives furnishes to the other Party or its Representatives on or after the Execution Date, in whatever form or medium provided (including, without limitation, via oral communications), all of which shall be deemed to be the Confidential Information of the Party making such disclosure whether or not any such Confidential Information is clearly marked as such or that contains, reflects or is derived from the furnished information; *provided, however*, the term “Confidential Information” shall not include information which (i) is or becomes generally available to the public other than as a result of acts by the receiving Party or its Representatives to whom the receiving Party supplies the Confidential Information, (ii) was in the receiving Party’s or its Representative’s possession prior to the date it was disclosed to either Party by the other Party or its Representatives, (iii) is disclosed to the receiving Party by a Third Party which is not, to the receiving Party’s knowledge, prohibited from disclosing such information by a legal or fiduciary duty to the disclosing Party, or (iv) is independently developed by the receiving Party or any of its Representatives without the use of any Confidential Information.

“Construction Work” means Seller’s design, engineering, development, construction, installation, ownership, maintenance and operation of the Generation Facility, Seller’s Electric Interconnection Facilities, Generation Facility Site, Facility Infrastructure, Seller’s Gas Connection, and any part of the Gas Lateral Pipeline under Seller’s control.



“Contract Year” means a period of one year, with the first such period commencing on and including the Commencement Date and continuing through but excluding the first anniversary of the Commencement Date, and with each successive period commencing immediately upon the conclusion of the prior period and continuing through but excluding the next anniversary of the Commencement Date. If the final Contract Year of the Term is for a period of less than one year, such final Contract Year of less than one year shall nevertheless be deemed to be a Contract Year for all purposes under this Agreement.

“Control” means, when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise. Instances of “Controls”, “Controlled by”, and “under common Control with” have meanings correlative thereto.

“Credit Rating” means, with respect to a Person, on any date of determination, the respective rating then assigned to such Person’s senior unsecured long-term debt or deposit obligations (not supported by Third Party credit enhancement) by S&P or Moody’s, or if a rating is assigned by both of S&P and Moody’s, the lower of all such assigned ratings.

“Credit Support” means Cash, a Letter of Credit, or a Guaranty; *provided*, that Seller shall not be permitted to use Cash as a form of Credit Support.

“Credit Support Amount” means, (a) with respect to Seller, the value of the Seller Credit Support and (b) with respect to Buyer, the value of the Buyer Credit Support.

“Data Center” means the data center facility Buyer will design, engineer, develop, construct, install, own, maintain and operate on the Data Center Site.

“Data Center Facilities” means all equipment and other facilities required for the operation of the Data Center, including Buyer’s Electric Interconnection Facilities and any such other equipment and other facilities required for the interconnection of the Data Center and Seller’s Electric Interconnection Facilities.

“Data Center Site” means that certain real property owned by Buyer generally identified on Exhibit A attached hereto and incorporated herein for all purposes.

“Day” or “day” means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Central Prevailing Time on any calendar day and ending at 24:00 hours Central Prevailing Time on the same calendar day.

“Defaulting Party” means the Party with respect to which an Event of Default has occurred and is continuing.

“Delay Condition” has the meaning set forth in Section 7.2(b).

“Delay Liquidated Damages” means the liquidated damages due from Seller to Buyer for failure to achieve Tranche 1 COD by the Guaranteed Tranche 1 COD or the Tranche 2 COD by the Guaranteed Tranche 2 COD, as the case may be (in each case, as such dates may be extended pursuant to Section 7.2(b)), calculated for each day from and after the Guaranteed Tranche 1 COD or Guaranteed Tranche 2 COD, as applicable, until the occurrence of Tranche 1 COD or Tranche 2 COD, as the case may be, at a daily rate equal to the Tranche 1 Delay LD Rate or Tranche 2 Delay LD Rate, as applicable, subject to the Maximum Pre-Tranche 1 COD Damages Cap or Maximum Pre-Tranche 2 COD Damages Cap, as the case may be.



“Delivered Energy” means the Metered Output of Energy associated with the Committed Capacity.

“Delivery Point” means with respect to Energy, the interconnection point of Seller’s Electric Interconnection Facilities to Buyer’s Electric Interconnection Facilities, which point shall be depicted on Exhibit G.

“Delivery Term” has the meaning set forth in Section 2.1(b).

“Domestic Content Tax Credit” means the domestic content bonus tax credit set out in 848E(a)(3)(B) of the Code.

“Electric Interconnection Facilities” means, collectively, the Seller’s Electric Interconnection Facilities and the Buyer’s Electric Interconnection Facilities.

“Eligible Guarantor” means, with respect to a Party, (a) a Qualified Issuer or (b) an Affiliate of such Party that has an Investment Grade Credit Rating.

“Emergency” means any circumstance or condition affecting the Generation Facility or the Data Center Facilities, as the case may be (a) under which continued delivery or receipt of Energy from the Generation Facility will materially harm the safe and reliable operation of the Generation Facility and/or the Data Center Facilities, as the case may be, or (b) as a result of which there is a risk of harm to natural persons or a risk of material harm to tangible property or the environment.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, generated by the Generation Facility, as measured by the Metering Facilities.

“Energy Supply Meters” means the metering and data processing equipment located at the Delivery Point needed for the measurement of Delivered Energy and the registration, recording and transmission of information regarding Delivered Energy.

“Environmental Contamination” means the introduction or presence of any waste or other substance that is listed, defined, designated or classified as or determined to be hazardous under or pursuant to any environmental law or regulation at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law.

“Event of Default” has the meaning set forth in Section 9.1(a).

“Execution Date” has the meaning set forth in the introductory paragraph of this Agreement.

“Existing Buyer Guaranty” means that certain Parent Guaranty dated October 8, 2025, with Meta Platforms, Inc., as Guarantor, issued in connection with the Original PPA.

“Existing Change in Law” has the meaning set forth in Section 11.13(f)(ii).

“Existing Seller Guaranty” means that certain Parent Guaranty dated October 9, 2025, with The Williams Companies, Inc., as Guarantor, issued in connection with the Original PPA.

“Extension Notice” has the meaning set forth in Section 2.1(b).

“Extension Term” has the meaning set forth in Section 2.1(b).

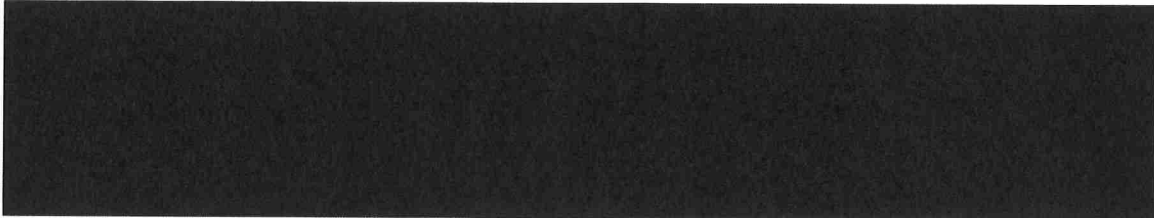


“Facility Infrastructure” means all equipment, pipelines, interconnections, and other facilities required for the operation of the Generation Facility, including the Seller’s Gas Connection and those portions of Seller’s Electric Interconnection Facilities located on the Generation Facility Site.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion Punch List” has the meaning set forth in Section 7.4(b).

“Force Majeure Event” has the meaning set forth in Section 8.1(b).



“Fuel” means natural gas.

“Fuel Affiliate” means the Affiliate of Seller party to a Transportation Agreement.

“Fuel Reduction Notice” has the meaning set forth in Section 7.6(g)(i).

“Fuel Supply Source(s)” means the source(s) from which Seller will obtain Fuel to be used in the Generation Facility.

“Gas Delivery Point” means the interconnection point of the [redacted]

“Gas Lateral Pipeline” means the natural gas pipeline known as the [redacted] connecting with Seller’s Gas Connection at the Generation Facility.

“GE Equipment” means the [redacted] from Buyer to Seller to be installed at the Generation Facility Site, as more fully described in Exhibit K attached hereto and incorporated herein for all purposes.

“GE Equipment PSAs” means those certain Contracts for Sale of Equipment and Services dated (i) as of [redacted]

“GE PSA Amendments” means any amendment of, or issuance of a change order pursuant to, either or both of the GE Equipment PSAs that Seller reasonably requests, accepts or otherwise agrees upon to enable the applicable GE Equipment to be delivered to and used by Seller to complete the Generation Facility as contemplated by this Agreement at the Generation Facility Site, including those changes required under the applicable GE Equipment PSA to the site location and the delivery point location. “GE PSA Amendments” shall also include any deviations, modifications or waivers to the GE Equipment PSAs that result from any GE PSA Amendments.

“GE Vernova” means [redacted]



“Generation Assets” means the Generation Facility, the Generation Facility Site, all applicable Permits, purchase orders (including any purchase orders for long-lead time equipment), contracts (including any BOP/EPC Contract and Transaction Agreement to which Seller or any of its Affiliates is a party) and other documentation or information (including the Operating Materials (as defined in Exhibit I) and any real property rights related to or associated with or maintained by Seller or one or more of its Affiliates party thereto for purposes of the design, engineering, construction, installation, operation and maintenance of the Generation Facility. For the avoidance of doubt, “Generation Assets” does not include the Gas Lateral Pipeline, any Transportation Agreements (including any Transportation Capacity thereunder or otherwise).

“Generation Equipment” means the GE Equipment and any other natural gas fired generation equipment to be located at the Generation Facility Site and used for purposes of generating from the Committed Capacity the Required Energy to be supplied to Buyer.

“Generation Facility” means the Generation Equipment, the BESS, the Facility Infrastructure, Seller’s Electric Interconnection Facilities, the Seller’s Gas Connection and any other equipment and facilities for which Seller is responsible for engineering, developing, constructing, installing, owning, operating, and maintaining in accordance with this Agreement (consistent in all material respects with the description of the Generation Facility set out in Exhibit B-1) as requested by Buyer to support the Buyer’s self-generation of Energy for the operation of the Data Center Facilities.

“Generation Facility Site” means that certain real property owned or to be owned by Seller, as more particularly identified and described in Exhibit B-2.

“Generation Facility Site Closing” means the consummation of the transfer of fee title to, or other conveyance of, the Generation Facility Site to Seller, following Seller’s completion (to its satisfaction in its sole discretion) of all diligence investigations with respect to the Generation Facility Site (including surveys, environmental assessments, title review, and other customary real property due diligence), pursuant to which Seller acquires all rights, title, and interest in the Generation Facility Site necessary for the development, construction, interconnection, and operation of the Generation Facility and Seller’s Electric Interconnection Facilities.

“Generation Facility Site Condition” means, in relation to the Generation Facility Site, any condition that Seller discovers, finds, is advised of or otherwise identifies at the Generation Facility Site at any time during the development, construction or installation of the Generation Facility, which (a) was not known by Seller to exist at the Generation Facility Site as of the Generation Facility Site Closing, and (b) results in (i) any delay in the completion of the Construction Work or (ii) any need for Seller or any one of its Affiliates or BOP/EPC Contractors to undertake a change to the engineering, design and/or construction of the Generation Facility in order to complete the Construction Work in accordance with Applicable Law and Prudent Electrical Practices. For purposes hereof, a “condition” shall include, but not be limited to, (i) the finding of (A) ancient burial grounds, (B) historical relics or artifacts, (C) fossils or (D) any other similar objects or items the disturbance of which is subject to intervention by any Governmental Authority, whether or not having historical relevance or significance, (ii) a claim of title to or rights of access to and ingress or egress across, over and/or under all or any portion of the Generation Facility Site by a Third Party (including any claim by a Third Party asserting mineral or any similar subsurface rights thereto) that cannot be reasonably accommodated by Seller, (iii) unanticipated soil or other subsurface conditions or (iv) the existence of any Environmental Contamination.

“GF Design Change” has the meaning set forth in Section 7.1(b)(ii).

“GF Design Change Costs” has the meaning set forth in Section 7.11(a).



“GF Design Change Notice” has the meaning set forth in Section 7.1(b)(ii).

“GLP Buydown Percentage” has the meaning set forth in Exhibit I.

“Governmental Authority” means (a) any federal, state, local, municipal or other government, including any applicable state utility regulator and any other state regulatory body with jurisdiction over this Agreement, a Party, or the subject matter hereof, or (b) any other governmental, quasi- governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, policy, regulatory or taxing authority or power over this Agreement, a Party, or the subject matter hereof.

“Governmental Charges” has the meaning set forth in Section 5.4(a).

“Governmental Official” has the meaning set forth in Section 11.2(c).

“Granted OCOD Extension Period” has the meaning set forth in Section 7.2(c).

“Guaranteed Availability” means the percentage of the Committed Capacity that Seller guarantees to make available during each hour during the Delivery Term as set forth in the table on Exhibit F, such percentage being equal to:

- (i) [REDACTED]
- (ii) [REDACTED]; and
- (iii) [REDACTED]

“Guaranteed Tranche 1 COD” means that date which is four (4) months following the Anticipated COD, as such date may be extended pursuant to Section 7.2(b).

“Guaranteed Tranche 2 COD” means that date which is four (4) months following Anticipated Tranche 2 COD, as such date may be extended pursuant to Section 7.2(b).

“Guaranty” means a guaranty issued by an Eligible Guarantor of either Buyer or Seller in the form attached hereto as Exhibit H.

“Guaranty Default” means, with respect to a Guaranty, (a) the issuer of such Guaranty no longer qualifies as an Eligible Guarantor, (b) the issuer of such Guaranty has failed to comply with any of its material covenants or obligations under such Guaranty and such failure has not been remedied within ten (10) days following Guarantor’s or Pledgor’s receipt of notice of such failure, (c) the issuer of such Guaranty has disaffirmed, disclaimed, rejected, or challenged the validity of such Guaranty, whether in whole or in part, (d) any representation or warranty made by the issuer under such Guaranty is false or misleading in any material respect when made or when deemed made or repeated and such failure, if capable of being remedied, is not remedied within ten (10) days following the Guarantor’s or Pledgor’s receipt of notice, (e) the issuer of such Guaranty has become Bankrupt, or (f) such Guaranty terminates or otherwise ceases to be in full force and effect while such Guaranty is required to be maintained pursuant to the terms of this Agreement.



“Hourly Fuel Payment” has the meaning set forth on Exhibit E.

“Illegality” means (i) any Applicable Law shall make the performance of this Agreement illegal or prohibited; or (ii) a court of competent jurisdiction or other Governmental Authority shall have issued an order, judgment, decree or ruling or taken any other action (which order, judgment, decree or ruling the Parties shall use commercially reasonable efforts to lift or vacate), in each case permanently restraining, enjoining or otherwise prohibiting the performance of this Agreement, and such order, judgment, decree, ruling or other action shall have become final and non-appealable.

“Import Tariff” means, with respect to the importation of any equipment into the United States, any duty, tariff, import tax, or other similar import fee or cost applicable to such equipment and incurred by Seller in connection with the development, procurement or construction of the Generation Facility or the Gas Lateral Pipeline.

“Incentive Compensation” has the meaning set forth in Section 7.2(a).

“Increased Monthly Charge Cap” has the meaning set forth in Section 11.13(a).

“Independent Engineer” means a reputable professional engineering consulting firm selected by Seller and approved by Buyer (such approval not to be unreasonably withheld, conditioned or delayed) that (a) is licensed and registered in the State of Utah; and (b) has at least ten (10) years of experience with the development and construction of natural gas fired power generation facilities.

“Installed Capacity” means the total nameplate Capacity of the Generation Facility actually installed by Seller, which does not include and is not intended by the Parties to include the total MW nameplate capacity of the BESS.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such date on the most recent preceding day on which published) plus $\blacksquare\%$ and (b) the maximum rate permitted by Applicable Law. If *The Wall Street Journal* ceases publication, the Parties shall agree to an alternate publication of the prime lending rate to determine the interest rate.

“Investment Grade Credit Rating” means a Credit Rating equal to or better than BBB- from S&P and Baa3 from Moody’s.

“kW” means a kilowatt of electric capacity.

“kWh” means a kilowatt-hour of Energy.

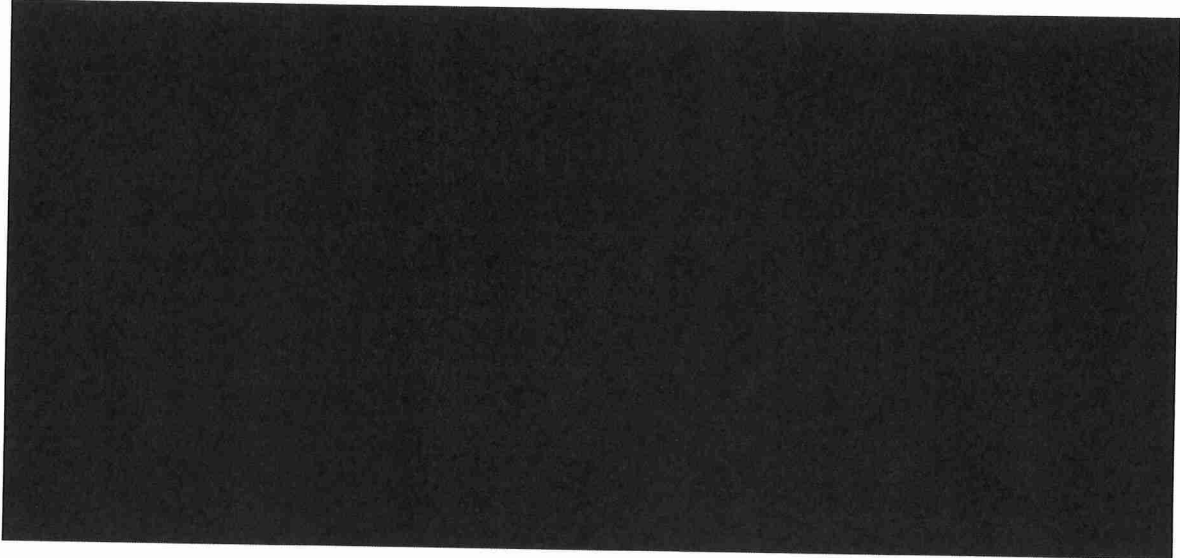
“Letter of Credit” means a non-transferrable, irrevocable standby letter of credit issued by a Qualified Issuer in a form reasonably acceptable to the Secured Party.

“Letter of Credit Default” means, with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (a) the issuer of the Letter of Credit ceases to be a Qualified Issuer; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or there shall be thirty (30) or less Days remaining until the expiration of such Letter of Credit, or such Letter of Credit shall fail or cease to be in full force and effect at any time during the term of the Agreement; or (e) the issuer of the Letter of Credit



becomes Bankrupt or any event analogous to an event specified in the definition of the term "Bankrupt" occurs with respect to the issuer of the Letter of Credit.

"Liability" and "Liabilities" have the meanings set forth in Section 9.4(a).



provided, however, that an event shall not qualify as a Load Transients Outage to the extent it is caused by Seller's negligence or Seller's failure to operate and maintain the Generation Facility in accordance with Prudent Electrical Practice.

"LTO Damages" means any temporary or permanent damage to, or destruction of, any Generation Equipment directly or indirectly caused by, or resulting from, a Load Transients Outage.

"Losses" has the meaning set forth in Section 9.4.

"Market Cessation Event" means (a) the disappearance or permanent discontinuation of the announcement or publishing of any price or value to be determined under this Agreement based on an agreed index, or (b) both Parties agree that a material change in the formula for or the method of determining any such index has occurred.

"Market Disruption Event" means, with respect to any price or value to be determined under this Agreement based on an agreed index, any of the following events: (a) the failure of that index to be announced or published for purposes of determining any value or price hereunder; (b) the failure of trading to commence or the discontinuation or material suspension of trading on the exchange or market providing any such index; (c) the temporary discontinuance or unavailability of the exchange or market providing any such index; (d) the temporary closing of any exchange publishing any such index.

"Maximum Availability Damages Cap" means \$ [REDACTED] for each Contract Year; *provided*, that for any Contract Year shorter than 365 days, such amount shall be ratably reduced.

"Maximum Pre-COD Damages Cap" means, prior to the achievement of Tranche 1 COD, the Maximum Pre-Tranche 1 COD Damages Cap, and in the case that Tranche 2 COD does not occur prior to the Guaranteed Tranche 2 COD, the Maximum Pre-Tranche 2 COD Damages Cap.



“Maximum Pre-Tranche 1 COD Damages Cap” means \$ [REDACTED]

“Maximum Pre-Tranche 2 COD Damages Cap” means \$ [REDACTED].

“Meter” means any one or more of the meters being part of the Metering Facilities.

“Metered Output” means, with respect to an hour, the amount of Energy generated by the Generation Facility, expressed in MWh, as Scheduled by Buyer in accordance with the Scheduling Procedures and delivered to the Delivery Point, as measured by the Energy Supply Meters.

“Metering Facilities” means collectively, (i) the Energy Supply Meters and (ii) the BESS Meters; which equipment and facilities described in (i) and (ii) immediately above shall be installed and owned, operated, and maintained by Seller in accordance with the terms of this Agreement as part of the Seller’s Electric Interconnection Facilities.

“Mitigation Plan” means a plan provided by Seller to Buyer setting out the specific steps Seller will undertake to remedy a Required Mitigation Event.

“MMBtu” means one million British thermal units, which is equivalent to a dekatherm.

“Monthly Charges” means, collectively, the Monthly Demand Payment, the Monthly Fixed O&M Payment, the Monthly Gas Reservation Payment, the Monthly Fuel Payment, and the Monthly Variable O&M Payment.

“Monthly Fixed O&M Payment” has the meaning set forth in Exhibit E.

“Monthly Fuel Payment” has the meaning set forth in Exhibit E.

“Monthly Gas Reservation Payment” has the meaning set forth in Exhibit E.

“Monthly Variable O&M Payment” has the meaning set forth in Exhibit E.

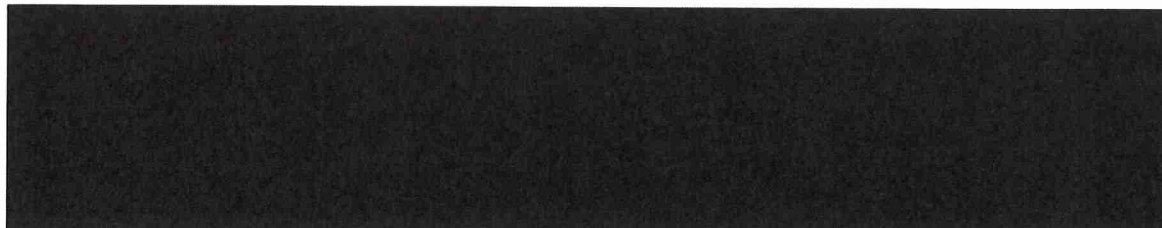
“Moody’s” means Moody’s Investors Service, Inc. or its successor, or in the event that there is no such successor, a NRSRO mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

[REDACTED] means the pipeline known as the [REDACTED] owned by [REDACTED].

“MW” means 1,000 kW of electric capacity.

“MWh” means 1,000 kWh of electric energy.

“New Index” has the meaning set forth in Section 8.6.





“Non-Defaulting Party” has the meaning set forth in Section 9.2(a).

“NRSRO” means a nationally recognized statistical rating organization registered with the Securities and Exchange Commission.

“OCOD Extension Notice” has the meaning set forth in Section 7.2(c).

“Omnibus Real Property Agreement” means that certain Omnibus Real Property Agreement to be executed by the Parties subsequent to the Execution Date addressing the matters described in Section 7.1(f).

“Open Season” has the meaning set forth in Section 7.12.

“Outside Commercial Operation Date” means [REDACTED] as such date may be extended pursuant to Section 7.2(b).

“Outside CP Satisfaction Date” has the meaning set forth in Section 2.1(d), as such date may be extended in accordance with Section 7.2(b).

“Parent” means the ultimate parent entity of a Party.

“Party” and “Parties” have the meanings set forth in the introductory paragraph of this Agreement.

“Peak to Peak Demand” means the absolute difference in electrical demand, measured in megawatts (MW), between the highest and lowest recorded load values.

[REDACTED]

“Permits” means, collectively, all federal, state or local authorizations, certificates, permits, permissions, licenses and other approvals required by any Governmental Authority or Applicable Law.

“Permitted Transferee” means a Person that (i) individually or together with its Affiliates (a) owns or operates or has engaged a Person to operate the Generation Facility that owns or operates, in either case, natural gas electric generating facilities with an aggregate nameplate capacity of at least 1,000 MW, and has done so for at least three (3) years; (b) if the Gas Lateral Pipeline are being transferred to such Person or its Affiliates, has for at least three (3) years owned or operated natural gas pipelines; (c) if the Gas Lateral Pipeline is being transferred to such Person or its Affiliates, has for at least three (3) years engaged in transactions for interstate natural gas pipeline capacity; (ii) as of the date of any assignment, satisfies the Credit Support requirements of this Agreement; (iii) as of the date of any assignment, assumes all of Seller’s other obligations under the Transaction Agreements; (iv) neither it nor any of its Affiliates are involved in litigation with Buyer or an Affiliate of Buyer where the aggregate demanded claims between the parties to such litigation exceed \$ [REDACTED] and (v) is not itself or the subsidiary of a Parent company that derives more than [REDACTED] percent ([REDACTED]%) of its aggregate net consolidated revenues from its social media or information technology businesses.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

“Pipeline Planned Outage” means a planned outage by a Transporter that prevents or delays Seller from bringing to the Generation Facilities sufficient Fuel to meet the requirements of the Committed Energy.



“Planned Outage” means subject to Seller’s obligations set forth in Section 7.6(c) in respect of minimizing the scope and impact of Planned Outages, the removal of a portion of the Generation Facility from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the period of the Planned Outage, notice of the period of the Planned Outage having been provided to Buyer by Seller no later than two (2) months prior to such outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Generation Facility consistent with Prudent Electrical Practices, and (b) cannot be reasonably conducted during the Generation Facility’s operations.

“Pledgor” means Buyer or Seller, as applicable, in its capacity as the Party that has transferred or is required to transfer Credit Support to the other Party in its capacity as the Secured Party.

“Pre-Market Cessation Index” has the meaning set forth in Section 8.6(b).

“Prudent Electrical Practices” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the region in which the Generation Facility is located that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all Applicable Laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediately preceding sentence.

“Prudent Gas Practices” means those practices, methods, standards and acts engaged in or approved by a significant portion of the natural gas industry in the region in which the Generation Facility and Gas Lateral Pipeline are located that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all Applicable Laws and regulations. Prudent Gas Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the natural gas industry in the relevant region, during the relevant period, as described in the immediately preceding sentence.

“PSC” means the Public Service Commission of Utah, or any successor entity authorized under the laws of the State of Utah.

“Qualified Issuer” means (a) a U.S. chartered bank with United States based assets of at least [REDACTED] Dollars (\$ [REDACTED]), (b) a Canadian, Japanese, or Australian bank with United States based assets of at least [REDACTED] Dollars (\$ [REDACTED]) and issuing via SWIFT the Letter of Credit through and presentable at its New York, NY, San Francisco, CA, or Charlotte, NC, branch or office, and in each case such bank having a credit rating on its senior unsecured debt of (i)(A) “A3” or higher from Moody’s or (B) “A-” or higher from S&P, or (ii) if rated by both Moody’s and S&P, both (i)(A) and (i)(B), and in the case of either (i)(A) or (i)(B), without a “credit watch,” “negative outlook” or other rating decline alert by either S&P or Moody’s at the rating set forth in (i)(A) or (ii)(B) respectively or (c) a bank mutually



agreed to by both Parties. Qualified Issuer shall exclude any issuer that fails to honor Buyer's draw request on a Letter of Credit or that has disaffirmed, disclaimed, repudiated or rejected, in whole or in part, or has challenged the validity of, a Letter of Credit.

"Qualified Operator" means a Person that (a) meets all of the qualifications of a Permitted Transferee (other than clauses (ii) and (iii) of the definition thereof); (b) individually or together with its Affiliates, or has engaged a Person to operate the Generation Facility, in either case, operates natural gas electric generating facilities with an aggregate nameplate capacity of at least [REDACTED] MW, and has done so for at least the previous [REDACTED] years; and (c) is not itself or the subsidiary of a Parent company that derives more than [REDACTED] percent ([REDACTED]%) of its aggregate net consolidated revenues from its social media or information technology businesses. Additionally, [REDACTED]

"Reduced Fuel Volume" has the meaning set forth in Section 7.6(g)(i).

"Reimbursement Agreement" means the Reimbursement Agreement entered into by WFSG and Buyer dated as of [REDACTED], pursuant to which WFSG (and/or its Affiliates) are obtaining rights of way and performing other development activities related to the Gas Lateral Pipeline.

"Replacement Agreement(s)" has the meaning set forth in Exhibit I.

"Representatives" means, as to any Person, such Person's Affiliates and each of its and its Affiliates' respective directors, officers, employees, agents, representatives, consultants, advisors (including financial advisors, attorneys, accountants, auditors and consultants) and investors.

"Required Energy" means the volume of Energy, in any given hour, as Scheduled by Buyer (up to 100% of the Committed Energy), that Buyer requires to power the operation of the Data Center Facilities.

"Required Mitigation Event" has the meaning set forth in Section 7.5(a).

"Sale" shall have the meaning set forth in Exhibit I.

"Sale Agreements" means any one or more of the agreements, documents, instruments, notices, certificates or other forms executed by each of the Parties for purposes of consummating any Sale pursuant to Section 2.3 of this Agreement.

"S&P" means S&P Global Ratings, a division of S&P Global Inc. or any successor thereto, or in the event that there is no such successor, a NRSRO mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

"Schedule," "Scheduling" or "Scheduled" means the actions of Seller, Buyer and/or their designated representatives, of notifying, requesting and confirming to each other the quantity and of Required Energy to be delivered on any given day or days during the Delivery Term to the Delivery Point in accordance with the Scheduling Procedures.

"Scheduling Procedures" has the meaning set forth in Section 7.6(b).

"Scope Reporting Rule" means (a) the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 Code of Federal Regulations §229.1500 et seq., as amended from time to time, and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Buyer



voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action (so long as Buyer has a reasonable basis for believing that compliance is prudent or legally required).

“Secured Party” means Buyer or Seller, as applicable, in its capacity as the Party to which Credit Support has been transferred, or is required to be transferred, by the other Party in its capacity as the Pledgor.

“Seller” has the meaning set forth in the introductory paragraph of this Agreement.

“Seller Credit Support Amount” means \$ [REDACTED]

“Seller Early Termination Right” has the meaning set forth in Section 7.3(c)(iii).

“Seller Indemnitees” has the meaning set forth in Section 9.4(b).

“Seller’s GF Design Change Costs” has the meaning set forth in Section 7.11(a).

“Seller’s Electric Interconnection Facilities” means those items of equipment (including electrical equipment), machinery, Metering Facilities, electrical lines and other apparatus, mechanisms and devices for which Seller shall be responsible pursuant to this Agreement, as more fully described in Exhibit G attached hereto, and which are to be engineered, designed, developed, constructed, installed, tested and commissioned by Seller pursuant to this Agreement for purposes of enabling Buyer to achieve self-generation of Energy for the Data Center Facilities by (i) connecting the Generation Facility to the Data Center and (ii) enabling the delivery of Required Energy to the Data Center Facilities.

“Seller’s Gas Connection” means that portion of the Facility Infrastructure including all gas pipelines and gas delivery/intake infrastructure for the delivery/receipt of Fuel to and into the Generation Facility, whether located within or outside of the boundaries of the Generation Facility Site; *provided, however,* that the Seller’s Gas Connection does not include all or any portion of the Gas Lateral Pipeline.

“Step-In Rights” is defined in Section 9.5(a).

“Target Import Tariff Amount” means \$ [REDACTED]

“Tax Credit Qualification Event” has the meaning set forth in Section 7.11(d).

“Tax Law Change” means (a) any change in or amendment to the Code or another applicable U.S. federal income tax statute, (b) any change in, or issuance of, or promulgation of any temporary or final Treasury regulations promulgated thereunder that results in any change to the interpretation of the Code or existing Treasury regulations, (c) any guidance from the Internal Revenue Service published in the Internal Revenue Bulletin and/or Cumulative Bulletin that applies, advances or articulates a new or different interpretation or analysis of any provision of the Code, any other applicable federal tax statute, or any temporary or final Treasury regulations promulgated thereunder, or (d) any change in the interpretation of the Code or Treasury regulations by any judicial decision by the U.S. Tax Court, a U.S. District Court, the U.S. Court of Federal Claims, a U.S. Court of Appeals or the U.S. Supreme Court, in each case, that applies, advances or articulates a new or different interpretation or analysis of U.S. federal income tax law.

“Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property),



personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest. "Taxes" excludes Import Tariff.

"Technical Dispute Notice" is defined in Section 11.16(b).

"Technical Expert" is defined in Section 11.16(b).

"Term" has the meaning set forth in Section 2.1(b).

"Third Party(ies)" means a person or entity unrelated to or unaffiliated with a Party, including a Governmental Authority.

"Tranche 1 Committed Capacity" means ■■■ MW.

"Tranche 1 COD" means the date determined in accordance with Section 7.4(b) as the date on which the Generation Facility has commenced Commercial Operation for the Tranche 1 Committed Capacity.

"Tranche 1 Delay LD Rate" means an amount per day for the applicable periods set forth on Exhibit J for Tranche 1 COD.

"Tranche 2 Committed Capacity" means ■■■ MW.

"Tranche 2 COD" means the date determined in accordance with Section 7.4(b) as the date on which the Generation Facility has commenced Commercial Operation for the Tranche 2 Committed Capacity.

"Tranche 2 Delay LD Rate" means an amount per day for the applicable periods set forth on Exhibit J for Tranche 2 COD.

"Transaction Agreements" means this Agreement, the Omnibus Real Property Agreement and each document representing, as applicable, the Buyer Credit Support and the Seller Credit Support, and each and every other document, agreement, contract or instrument entered into between Seller and Buyer related to this Agreement on or after the Execution Date; *provided, however*, Transaction Agreements shall not include the Reimbursement Agreement, any of the BOP/EPC Contracts or any other contracts, agreements, documents or instruments entered into by Seller or any Affiliate of Seller for the Construction Work, each of which are included in the Generation Assets to the extent specifically set forth in the definition thereof.

"Transportation Agreement" means an agreement entered into by Seller (or a Fuel Affiliate) pursuant to which Transportation Capacity has been or is to be reserved or otherwise made available for the delivery of Fuel to the Generation Facility, which may include (but is not limited to) firm transportation agreements, asset management agreements or other agreements with a Third Party.

"Transportation Capacity" means the transportation capacity that is to be used or, as applicable, is being used for purposes of supplying Fuel to the Generation Facility via the Gas Lateral Pipeline.

"Transportation Reservation Quantity" has the meaning set out in Exhibit E.



“Transportation Tariff” means, the applicable tariff or rate schedule published by a Transporter for capacity reserved on any such Transporter’s pipeline, as each may be amended from time to time.

“Transporter(s)” shall mean all Fuel gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Fuel for Seller upstream of the Seller’s Gas Connection.

“Variable O&M Rate” has the meaning set out in Exhibit E.

“WFSG” means [REDACTED]

“Will-Power” has the meaning set forth in Section 11.4(a).

“Will-Power Assignment” has the meaning set forth in Section 11.4(a).

1.2 Standards of Interpretation

For purposes of this Agreement: (a) terms defined in the singular include the plural and vice versa; (b) references to “Articles,” “Sections,” “Exhibits,” and “Attachments” are to articles or sections of, or exhibits or attachments to, this Agreement; (c) all references to a particular entity include that entity’s successors and permitted assigns; (d) the words “herein,” “hereof,” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection; (e) all accounting terms not specifically defined in this Agreement are to be construed in accordance with generally accepted accounting principles in the United States, consistently applied; (f) references to this Agreement include the appendices, Exhibits, Attachments, annexes, schedules, and other attachments to this Agreement, as the same may be amended, supplemented, replaced, restated, or otherwise modified from time to time; (g) terms used in the masculine include the feminine and neuter and vice versa; (h) the word “including,” when used in this Agreement, means including without limitation; (i) references to “Dollars” and the symbol “\$” mean U.S. Dollars; (j) references to any Governmental Authority include any successor to its applicable functions; (k) references to “or” are disjunctive but not necessarily exclusive; unless the context dictates otherwise, “or” is to be interpreted as “and/or” rather than “either/or”; (l) terms used but not specifically defined in this Agreement shall have the meanings commonly used in the English language and, where applicable, in Prudent Electrical Practices or Prudent Gas Practices; and (m) references to any Applicable Law, including the Bankruptcy Code, include any amendments, successor, or replacement thereto.

**ARTICLE 2
TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS**

2.1 Term; Delivery Term; Conditions Precedent

(a) This Agreement shall be effective on the Execution Date as to each of the provisions contained in this Article 2, and Article 5 (to the extent applicable to any payments owed between the Parties prior to the satisfaction of the Conditions Precedent), Article 6, Section 7.1, Section 7.2, Section 7.3, Section 7.4, Section 7.6(g), Section 7.7, Section 7.10, Article 8, Article 9, Article 10 and Article 11 only, and in each case only to the extent any obligations of a Party or representation, warranties or covenants of a Party are applicable hereunder prior to the Commencement Date.

(b) On the date upon which Seller has satisfied the Conditions Precedent, the balance of the terms and conditions of this Agreement shall become effective and, unless earlier terminated pursuant to the terms of this Agreement or by agreement of the Parties, will terminate [REDACTED] years and [REDACTED] months following Tranche 2 COD. The period beginning on the Execution Date and continuing until the date that is [REDACTED] years and [REDACTED]



(vi) [REDACTED]

(vii) [REDACTED]

[REDACTED]

(d) [REDACTED]

2.2 Effect of Termination; Survival of Obligations

(a) Generally. Except as set forth in Section 2.2(b) or as may otherwise be expressly set forth in any other provision of this Agreement, following termination of this Agreement neither Party will have future or further rights or obligations under this Agreement.

(b) Survival of Obligations. In addition to any other provisions of this Agreement that by their terms survive the termination of this Agreement, the following rights, obligations, and provisions survive the termination of this Agreement:

- (i) the provisions of this Section 2.2(b), Section 2.2(a) and Section 2.3;
- (ii) the obligations of a Party to the other Party to pay any amounts or to perform any duties or obligations that accrued or arose prior to, that directly resulted from, or that contemplate performance following, the termination of this Agreement;
- (iii) the payment related provisions set forth in Section 5.2;
- (iv) the provisions of Section 7.6(g), to the extent not otherwise superseded by any applicable Sale Agreement, Replacement Agreement or other agreement executed between the Parties at the time of any Sale or Buyout;
- (v) the limitation of liability provisions set forth in Section 9.3 and the warranty limitations set forth in Section 10.3;
- (vi) the indemnity obligations set forth in Section 9.4 (which survive through the conclusion of the statute of limitations period applicable to any potential Claim by a Third Party); and
- (vii) the provisions of Article 11, except Section 11.2 (Business Conduct Clauses), Section 11.4 (Assignment), Section 11.13 (Change in Law), and Section 11.20 (FERC Standard of Review; Mobile-Sierra Waiver).



2.3 [REDACTED]

(a) [REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

(i) [REDACTED]

[REDACTED]

(ii) [REDACTED]

[REDACTED]

(c) [REDACTED]

[REDACTED]

(i) [REDACTED]

[REDACTED]

(ii) [REDACTED]

[REDACTED]



(iii)

(d)

(e)

(f)

**ARTICLE 3
PURCHASE AND SALE**

3.1 Purchase and Sale of Required Energy

(a) Generally. In accordance with the terms and conditions of this Agreement, commencing on the Commencement Date and continuing throughout the Term, Seller shall sell, and Buyer shall purchase all of the Required Energy up to the Committed Energy, and Seller shall deliver at the Delivery Point, and Buyer shall accept from Seller at the Delivery Point, all such Required Energy.

(b) Null Power. The Energy sold by Seller to Buyer will be “null power”, meaning that all environmental attributes associated with the Delivered Energy sold hereunder, including any instruments or certificates derived from those attributes, shall be retained by Seller and not transferred to Buyer with the sale of the Delivered Energy.

3.2 Delivery Point

(a) Allocation of Costs and Risks. Seller is responsible for all costs and charges imposed on or associated with the Required Energy or the delivery of the Required Energy hereunder up to the Delivery Point.



Buyer is responsible for all costs and charges imposed on or associated with the Required Energy, or its receipt, at and after the Delivery Point.

(b) Title and Risk of Loss. Title to, and risk of loss related to, the Required Energy delivered to Buyer transfers from Seller to Buyer at the Delivery Point.

ARTICLE 4 METERING

4.1 Metering Requirements

The amount of Delivered Energy transferred from Seller to Buyer at the Delivery Point will be determined based on measurements made by the Metering Facilities to determine the volume of Required Energy delivered to the Data Center Facilities at the Delivery Point. Seller shall ensure that all Metering Facilities are selected, provided, installed, owned, maintained, and operated in accordance with the requirements of this Agreement and Seller's design and engineering plans for the Seller's Electric Interconnection Facilities, at Seller's sole cost and expense. Seller shall ensure that all Metering Facilities are tested at least annually. Seller shall provide reasonable prior notice to Buyer of the time and date of each test of the Metering Facilities, and shall permit Buyer (or its Representative) to be present at such tests.

4.2 Meter Inaccuracies and Retroactive Adjustments

If a Meter fails to register, or if the measurement made by a Meter is found upon testing to be inaccurate by an amount exceeding any applicable tolerances established for such Meter, the Parties shall adjust all measurements made by the inaccurate or defective Meter during the affected period in order to account for such inaccuracy. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the applicable Meter was in service since last tested, but not exceeding [REDACTED] months, in the amount the applicable Meter shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the records associated with a Meter shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of applicable Metering Facilities.

4.3 Records and Audits

(a) Records. Seller shall keep complete and accurate records necessary for the purposes of proper administration of this Agreement, including all records necessary for billing and payments, records of the Metered Output, BESS Net Losses and Actual Availability, and such other records as may be required by applicable Governmental Authorities or Prudent Electrical Practices. Seller shall retain all such records throughout the Delivery Term and for a period of not less than [REDACTED] years following the termination of this Agreement. Seller shall upon request provide Buyer with copies of such records and with such other information as Buyer may reasonably require in connection with the performance of Seller's obligations under this Agreement or any Applicable Laws. Buyer's review and consent, or lack thereof, with respect to any matter herein, shall not waive Seller's obligations hereunder, nor shall such review and consent, or lack thereof, give rise to any claim by Seller for damages or excuse performance by Seller of its obligations stated herein. Further, Buyer's review and consent, or lack thereof, shall not be construed as an endorsement by Buyer of the design, engineering, construction or testing thereof nor as any express or implied warranty as to the performance, safety, durability, reliability or compliance with Applicable Laws of Seller or the Construction Work.

(b) Audit Rights. Buyer has the right, at any time during the Delivery Term and for a period of [REDACTED] years thereafter, to reasonably audit and to examine Seller's records and data kept by Seller relating to the performance



of its obligations under, and the administration of, this Agreement during normal business hours and upon reasonable prior notice. Each Party is responsible for its own costs and expenses associated with any audit or examination.

ARTICLE 5 BILLING AND PAYMENT

5.1 Billing

(a) Except as otherwise specified in this Agreement, the calendar month is the standard period for all payments under this Agreement. On or before the [REDACTED] Business Day following the end of each calendar month included in the Term, Seller (or an Affiliate of Seller acting as its agent) shall provide to Buyer, or its designee, an invoice specifying (i) the amount due to Seller for all Monthly Charges for the preceding calendar month, and (ii) any other amounts due and owing between the Parties with respect to such preceding calendar month, including, as and when applicable, any Availability Damages, Delay Liquidated Damages, and/or Monthly Gas Reservation Payments not already included in the Monthly Charges.

(b) Each such invoice provided by Seller must be accompanied by supporting documentation sufficient to enable Buyer to verify the accuracy of the amounts specified in the invoice. Seller's delivery of the invoice shall be made in accordance with the notice requirements of Section 11.1.

(c) All invoices will include a unique invoice number, identify or make specific reference to this Agreement, reflect Seller's name, remittance address and, if applicable, the tax identification number. Unless otherwise instructed in writing, Buyer may rely on the remittance address specified on the Seller's invoice.

5.2 Payments

(a) Generally. Subject to Section 5.2(c) and any provisions of this Agreement to the contrary, Buyer shall remit payment on any invoice under this Agreement on or before the [REDACTED]th day after receipt of such invoice or, if such day is not a Business Day, then on the next following day that is a Business Day. Subject to Section 5.2(c), Seller shall pay all amounts due to Buyer under this Agreement, including any Delay Liquidated Damages, Availability Damages, or otherwise in respect of any obligation of Seller to indemnify or reimburse Buyer, within [REDACTED] ([REDACTED]) days following the end of the calendar month in which such amounts have become due. All payments under this Agreement will be made by the applicable Party by wire transfer of immediately available funds to the account designated in writing by the payee for receipt of such payments.

(b) Late Payments and Interest Rate. Any undisputed amounts not paid when due will accrue interest on a daily basis at the Interest Rate from and including the date due through but excluding the date paid. All calculations of interest will be computed on the basis of a 365-day year.

(c) Corrections to Invoices; Payment Disputes. Each Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice under this Agreement within [REDACTED] ([REDACTED]) months following the date such invoice, or adjustment to an invoice, was rendered. Any dispute with respect to an invoice must be made in writing and include a reasonably detailed description of the basis for such dispute. If a Party provides written notice of a dispute with respect to an invoice prior to the applicable due date for such invoice, such Party shall pay the undisputed amount of such invoice when due. If in connection with the resolution of the dispute it is determined that (i) an additional payment is due by a Party, such Party shall make the required payment to the other Party within [REDACTED] ([REDACTED]) Business Days following such resolution, together with interest accrued at the Interest Rate from and including the due date to but excluding the date paid or (ii) a Party is entitled to a refund of any amount previously paid, the other Party shall, at the entitled Party's election, either return the amount overpaid within [REDACTED] ([REDACTED]) Business Days following such resolution or provide the entitled Party with a credit on the next invoice delivered following



resolution of the dispute equal to the amount overpaid, in each case together with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid by the other Party or reflected as a credit in an invoice delivered by the other Party, as applicable. If the resolution of any disputed amount results in a payment due from a Party, such Party's payment obligations under this Agreement will only be satisfied once such dispute is resolved and the amount, if any, payable by such Party upon such resolution has been paid.

5.3 Netting of Payments

All undisputed mutual debts and payment obligations due and owing between the Parties on the same day pursuant to this Agreement, including any damages, interest, and payments or credits, will be automatically satisfied and discharged through netting, and if the aggregate amount payable by one Party exceeds the aggregate amount that otherwise would have been payable by the other Party, replaced by an obligation of the Party by which the larger aggregate amount would have been payable to pay to the other Party the excess of the larger aggregate amount over the smaller aggregate amount.

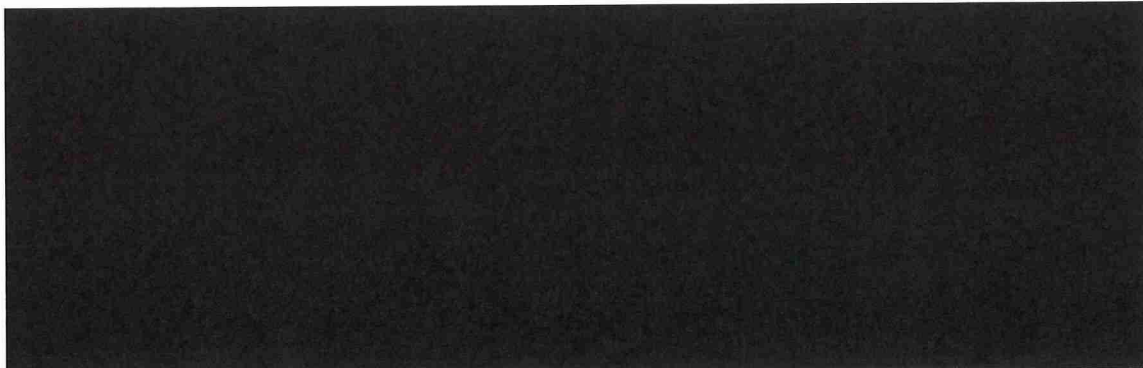
5.4 Governmental Charges

(a) Subject to the provisions of Section 7.8 regarding Import Tariffs, Seller shall pay or cause to be paid (i) all Taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Generation Facility, including the Required Energy arising prior to the Delivery Point and, if and as applicable, related to the Committed Capacity and (ii) all Import Tariffs. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Required Energy at and from the Delivery Point, save for any such Governmental Charges for which Buyer is exempt and for which Seller is not required to invoice or collect from Buyer based upon any valid and then effective exemption or other certificate provided by Buyer to Seller reflecting any such exemption. In the event one Party remits or pays any Governmental Charges that are the other Party's responsibility hereunder, the amount of such payment shall be included in the calculation of the next monthly net payment amount calculated by Seller pursuant to this Article 5. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. Buyer shall furnish a Tax exemption certificate upon request by Seller.

(b) The Parties shall reasonably cooperate to minimize each Party's Taxes; *provided, however*, that neither Party is obligated to incur any financial burden to reduce Taxes for which the other Party is responsible hereunder. All Required Energy delivered by Seller to Buyer hereunder are not sales for resale.

**ARTICLE 6
CREDIT REQUIREMENTS**

6.1 Seller Credit Support





[Redacted]

6.2 Buyer Credit Support/Reduction of Buyer's Credit Support

(a) [Redacted]

(b) [Redacted]

(c) Buyer Assets [Redacted]

6.3 Loss of Investment Grade Credit Rating

[Redacted]

6.4 General Provisions Applicable to Credit Support

(a) Credit Support in the form of Cash.



(i) [Redacted text block]

(ii) [Redacted text block]

(iii) For purposes of this Agreement, the value of Credit Support in the form of Cash is equal to the amount of such Cash.

(b) Credit Support in the form of a Letter of Credit.

(i) [Redacted text block]

(A) [Redacted text block]

(B) [Redacted text block]

(ii) [Redacted text block]



[Redacted text block]

(iii) [Redacted text block]

(iv) [Redacted text block]

(v) [Redacted text block]

(vi) [Redacted text block]

(c) Credit Support in the Form of a Guaranty. [Redacted text block]

(d) Substitution and Return.

(i) [Redacted text block]

(ii) [Redacted text block]



[REDACTED]

(e) Secured Party's Rights and Remedies.

[REDACTED]

6.5 Security is Not a Limit on Post-COD Liabilities

[REDACTED]

6.6 UCC Waiver

[REDACTED]

ARTICLE 7
ADDITIONAL OBLIGATIONS

7.1 Construction, Operation and Maintenance of the Generation Facility; Buyer's Electric Interconnection Facilities; Access to Data Center Site.

(a) Generally. To enable Buyer to achieve self-generation of Energy for the Data Center Facilities, Seller shall design, develop, construct, own, operate, and maintain the Generation Facility in accordance with this Agreement, the Omnibus Real Property Agreement, all Applicable Laws, all Permits, and Prudent Electrical Practices and Prudent Gas Practices (as applicable). Only Seller or its Affiliates, Buyer in the case that Buyer elects to exercise its Step-In Rights or a Qualified Operator is permitted to operate the Generation Facility. Buyer shall engineer, construct and maintain Buyer's Electric Interconnection Facilities consistent with Prudent Electrical Practices.



(b) Seller Construction Work and Operational Risk Mitigation Obligations; GF Design Changes.

- (i) To further the purpose of enabling Buyer to achieve self-generation of Energy for the Data Center Facilities, Seller has agreed it will design, engineer, operate and maintain the Generation Facility and perform the Construction Work in order to reduce the construction delay risk, reduce the outage risk and maximize and manage the availability of the Committed Capacity and Committed Energy, consistent with Prudent Electrical Practices. Seller shall also own, operate, maintain, manage and use the Gas Lateral Pipeline in a manner to reduce the curtailment or interruption risk of the supply of Fuel to the Generation Facility consistent with Prudent Gas Practices. Notwithstanding anything contained herein to the contrary, Buyer's sole and exclusive remedy for any failure on the part of Seller to comply with the foregoing provisions of this Section 7.1(b)(i) shall (as set out in Section 7.5(c) below) be limited to any Availability Damages that result from any such failures in accordance with Section 7.5 below and/or any of the rights set forth in Section 9.1(b) providing a right in favor of Buyer to terminate this Agreement based on an Event of Default by Seller related to the Actual Availability of the Generation Facility.
- (ii) At any time prior to Tranche 1 COD, if Buyer desires for Seller to modify the design of the Generation Facility to address Buyer's Energy needs at the Data Center (each a "GF Design Change"), Buyer shall provide written notice to Seller (the "GF Design Change Notice") of any such GF Design Change, in which Buyer will set forth the GF Design Change, the basis for the change, and, if known at the time, the time frame in which Buyer seeks to have the GF Design Change implemented at the Generation Facility. Following its receipt of the GF Design Change Notice, Seller will consider Buyer's request in good faith and advise Buyer regarding (1) whether the Buyer's GF Design Change can be achieved consistent with Prudent Electrical Practices without any material incremental Seller costs, (2) the projected costs thereof and requirements associated therewith, and (3) any other changes to this Agreement that may be reasonably required including extension of deadlines and/or forgiveness for any resulting availability issues. Buyer will advise Seller whether it wishes to proceed with the completion of any GF Design Change which Seller deems feasible on the terms provided by Seller. If Buyer so advises, a mutually agreeable written amendment will be entered into between the Parties setting forth all aspects of the GF Design Change, including projected costs, the method of payment by Buyer of the projected (and final) costs, the projected timeframes for completion, any delay to Tranche 1 COD and/or Tranche 2 COD, and any other relevant terms and conditions.

(c) Compliance. Seller shall, and shall cause any of its applicable Affiliates to, in its own name and at its own expense, seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Applicable Law or Governmental Authority in order to enable Seller, or Seller to cause its applicable Affiliates, to perform its obligations under this Agreement.

(d) Disclosure. Each Party shall provide to the other Party such information regarding the permitting, engineering and construction of the Generation Facility or Buyer's Electric Interconnection Facilities, respectively, as the other Party may from time to time reasonably request, subject to licensing or other restrictions with respect to confidentiality, disclosure or use that would prevent a Party from providing such information to the other Party.



(e) Insurance. Seller shall at all times during the Term maintain at its sole expense, policies of insurance in amounts and with coverage as set forth in Exhibit C-1 and Buyer shall at all times during the Term maintain at its sole expense, policies of insurance in amounts and with coverage as set forth in Exhibit C-2.

(f)

[Redacted]

7.2 Commercial Operation Date Obligations

(a) Generally

[Redacted]

(b) Date Extensions

[Redacted]



(c) Requested Date Extension.

[Redacted content]

7.3 Delay Liquidated Damages

(a) Commercial Operation Date Notices.

[Redacted content]

(b) Failure to Timely Achieve Commercial Operation.

[Redacted content]

(c) Exclusive Remedies in Respect of Failure to Achieve Commercial Operation.

(i)

[Redacted content]



(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

7.4 Commercial Operation Procedure

(a) Construction. Seller shall construct the Generation Facility and cause the Installed Capacity of the Generation Facility to be equal to the Anticipated Nameplate Capacity on or before the Outside Commercial Operation Date; *provided, however*, that notwithstanding anything contained herein to the contrary, the sole and exclusive remedies for any failure by Seller to achieve any of the foregoing in this Section 7.4(a) shall be set forth in Section 7.3(c) and Section 7.4(b).

(b) Commercial Operation Conditions [REDACTED]

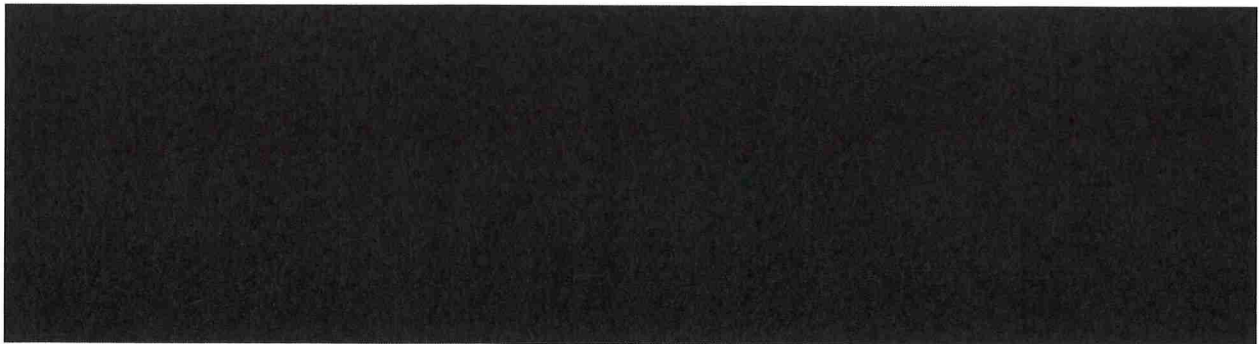


- (i) An officer of Seller or of an Affiliate of Seller, as applicable, that is familiar with the Generation Facility has certified in writing to Buyer that (A) Seller has satisfied or waived all of the Conditions Precedent, (B) Seller is in compliance with the terms and conditions of this Agreement in all material respects and (C) the Generation Facility has achieved commercial operations consistent with Prudent Electrical Practices and is capable of reliably producing and delivering Required Energy to Buyer.
- (ii) Seller's Electric Interconnection Facilities have been completed and commissioned in accordance with this Agreement.
- (iii) Seller has provided to Buyer certificates of insurance evidencing the coverages required by Section 7.1(e).
- (iv) The Installed Capacity of the Generation Facility is at least equal to [REDACTED] in the case of Tranche 1 COD and [REDACTED] in the case of Tranche 2 COD.
- (v) Seller has all Permits required to operate the Generation Facility in accordance with Applicable Law.

If the Commercial Operation Conditions have been satisfied, save and except those which Seller cannot reasonably satisfy because Seller was prevented from completing Seller's Electric Interconnection Facilities due to breach by Buyer of its obligations under any of the applicable Transaction Agreements (including failure to complete Buyer's Electric Interconnection Facilities in accordance with this Agreement) or because Buyer is not prepared to Schedule or willing to receive the Required Energy, Tranche 1 COD or Tranche 2 COD, as the case may be, will otherwise be deemed to have occurred.

(c) If Tranche 2 COD is to be achieved with Installed Capacity of less than the Anticipated Nameplate Capacity, within [REDACTED] ([REDACTED] Business Days following the Tranche 2 COD, Seller will provide Buyer with a plan detailing the remaining Construction Work related to the Generation Facility required to be completed in order for Seller to achieve Installed Capacity of at least the Anticipated Nameplate Capacity ("Final Completion Punch List"). Seller shall use commercially reasonable efforts to complete the Final Completion Punch List as soon as reasonably possible but in any event on or before the [REDACTED] anniversary of Tranche 2 COD; *provided, however*, it shall not be an Event of Default hereunder if Seller has not achieved Installed Capacity of at least the Anticipated Nameplate Capacity as of such first anniversary date of Tranche 2 COD if Seller is continuing to diligently pursue commercially reasonable efforts to complete the Final Completion Punch List; *provided further* that this paragraph is the applicable sole and exclusive remedy of Buyer referred to in Section 7.4(a) for Seller's failure to cause the Installed Capacity to equal or exceed the Anticipated Nameplate Capacity on the Tranche 2 COD.

7.5 Guaranteed Availability; Availability Damages





[REDACTED]

[REDACTED]

[REDACTED]

(d) [REDACTED]

[REDACTED]

7.6 Obligation to Schedule and Deliver

(a) Sharing of Operating Data and Generation Forecasts. During the Delivery Term, Seller shall share with Buyer real-time operating data from the Generation Facility.

(b) Scheduling Procedures. The Parties shall agree to procedures for the scheduling and delivery of the Required Energy, taking into account the operating capabilities of the Generation Facility and the applicable interconnecting natural gas pipelines (the "Scheduling Procedures") no later than sixty (60) days prior to the Anticipated COD, which Scheduling Procedures will apply during the entirety of the Delivery Term, subject to any subsequent mutual modification by the Parties. The failure of the Parties to agree to and implement such Scheduling Procedures with the foregoing [REDACTED] ([REDACTED]) day-period shall not be or give rise to an Event of Default by either Party.

(c) Planned Outages. Seller, with Buyer's input, shall (taking into consideration Prudent Electrical Practices, manufacturer's recommendations and Buyer's requirements) plan any Planned Outages in a manner that

[REDACTED]



[REDACTED]

[REDACTED]

(e) Operation of the Generation Facility. Seller shall operate and maintain the Generation Facility and, as applicable, the Seller's Gas Connection, in accordance with Prudent Electrical Practices, Prudent Gas Practices (as applicable) and Applicable Laws. Notwithstanding anything contained herein to the contrary, [REDACTED]

[REDACTED]

(f) Fuel Supply. Seller will have sole responsibility for the arrangement, procurement, transportation, nomination, and delivery of all Fuel required for the operation of the Generation Facility and generation of Energy under this Agreement. If any Transporter has a Pipeline Planned Outage for purposes of maintenance of, modifications to, testing of and/or repairs to any pipeline of such Transporter, Seller shall also plan accordingly and endeavor to use the Gas Lateral Pipeline and Fuel Supply Sources to minimize any loss of availability of Committed Energy generated by the Generation Facility. Seller shall use commercially reasonable efforts to plan its own Planned Outages (to the extent consistent with Prudent Electrical Practices) to coincide with any Pipeline Planned Outages in compliance with Section 7.6(c) to the extent possible in an effort to further minimize Generation Facility downtime.

(g) Reduced Fuel Volume; Replacement Agreements.

(i) If termination of this Agreement has occurred, within no more than [REDACTED] () Business Days from the date of any such termination, if Buyer has determined that it does not have the need for Fuel in quantities equal to the Transportation Reservation Quantity, Buyer shall provide written notice to Seller (the "Fuel Reduction Notice"), in which Buyer will set forth the volume of Fuel which it requires following the consummation of the Buyout (the "Buyer Required Volume"),



with the difference between the Transportation Reservation Quantity and the Buyer Required Volume being the “Reduced Fuel Volume”).

- (ii) Upon consummation of the Buyout, the Parties will enter into the Replacement Agreements contemplated under Exhibit I for the supply of Fuel in an amount equal to the Buyer Required Volume.

7.7 Publicity

The Parties shall not, and shall cause its respective Affiliates to not, issue or make any public announcement, press release, or statement regarding this Agreement unless the public announcement, press release, or statement is either (a) issued jointly by the Parties or (b) before the release of the public announcement, press release, or statement, the releasing Party furnishes the other Party with a copy of such announcement, press release or statement, and obtains such other Party’s approval with respect thereto. Notwithstanding the foregoing, no Party is prohibited from issuing or making any such public announcement, press release or statement, without obtaining approval from the other Party, if it is necessary to do so to comply with Applicable Laws (including in connection with the issuance of any Permit), legal proceedings or rules and regulations of any Governmental Authority or stock exchange having jurisdiction over such Party or any of its Affiliates, or if it is necessary to do so in connection with such Party’s or its Affiliates’ financial statements; *provided, however*, that in the case of any such disclosure, the disclosing Party shall endeavor to limit the scope of the disclosure, seek agreement of confidentiality from the entities to whom the disclosure is made, and seek the highest available level of confidentiality available from the Governmental Authority or stock exchange.

7.8 Import Tariffs.

- (a) [REDACTED]



7.9 Generation Facility Site Closing.

(a) Buyer and Seller shall each use commercially reasonable efforts to cause the Generation Facility Site Closing in connection with the Conditions Precedent set forth in Section 2.1(c)(vi) to occur as soon as practical following the Execution Date. If the Generation Facility Site Closing has not occurred within [REDACTED] days following the Execution Date (except to the extent due to a failure on the part of Seller or its Affiliates), then Buyer will be obligated to pay to Seller [REDACTED] interest (at an annual rate equal to the lesser of [REDACTED] percent ([REDACTED]) and the highest rate of interest permitted by Applicable Law) on all Seller's Development Costs (as defined in Exhibit I) incurred by Seller until the Generation Facility Site Closing actually occurs. All such sums will be paid to Seller in accordance with the provisions of Article 5.

(b) [REDACTED]

7.10 Information Sharing.

(a) Seller shall promptly provide to Buyer any information related to the Generation Facility, the Gas Lateral Pipeline, or this Agreement reasonably requested by Buyer, including but not limited to:

- (i) [REDACTED]
- (ii) [REDACTED]
- (iii) [REDACTED]

(b) Buyer shall promptly provide to Seller any information related to Buyer's Electric Interconnection Facilities or this Agreement reasonably requested by Seller in order for Seller to be able to undertake, without interruption or delay, its obligations under this Agreement, including, but not limited to:

- (i) Promptly following receipt/completion thereof, preliminary as-built drawings for Buyer's Electric Interconnection Facilities to which Seller's Electric Interconnection Facilities will be connected; and



- (ii) Copies of all material notices related to any delays in or stoppages of construction of Buyer's Electric Interconnection Facilities that would prevent or delay Seller from achieving either Tranche 1 COD or Tranche 2 COD.

7.11 [REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

(A) [REDACTED]

(B) [REDACTED]



(c)

[REDACTED]

(d) Domestic Content Tax Credit. Seller will use commercially reasonable efforts to qualify for and continue to qualify for the Domestic Content Tax Credit based on the domestic content of the BESS; *provided, however*, Seller makes no representation or warranty that it or the BESS will qualify for, or that Seller will be entitled to, the benefits of the Domestic Content Tax Credit. If Seller qualifies for the Domestic Content Tax Credit (such qualification, a “Tax Credit Qualification Event”), Seller will provide written notice to Buyer providing that Seller has achieved a Tax Credit Qualification Event.

[REDACTED]

7.12

[REDACTED]

ARTICLE 8

FORCE MAJEURE; CONDEMNATION; ILLEGALITY; MARKET DISRUPTION

8.1 Force Majeure Events



(a) Excuse. Subject to Section 8.2, and except as expressly set forth herein, neither Party will be considered to have breached its obligations under this Agreement if performance of its obligations is prevented or delayed due to a Force Majeure Event. Neither Buyer's nor Seller's payment obligations under Section 5.2 will be excused by any Force Majeure Event. Notwithstanding anything contained herein to the contrary, if Buyer exercises any relocation rights and Seller's performance of its obligations hereunder is prevented or delayed, such prevention or delay shall be deemed to be (and treated as): (i) a Buyer Related Delay Condition (if it occurs prior to Tranche 2 COD), or (ii) a Force Majeure Event (if it occurs after Tranche 1 COD) and in which case the provisions of Section 8.2 and Section 8.3 shall not apply. In no event shall any such prevention or delay result in an Event of Default by Seller hereunder.

(b) Definition. For purposes of this Agreement, "Force Majeure Event" means, subject to Section 8.1(c), any event or circumstance that wholly or partly prevents or delays the performance by a Party of any obligation arising under this Agreement, but only if and to the extent that: (1) such event was not anticipated as of the date of this Agreement or any transactions contemplated hereunder, (2) is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligations excused; (3) the Party seeking to have its performance obligations excused has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement, and which by the exercise of reasonable diligence such Party could not reasonably have been expected to avoid or overcome; and (4) such event is not the direct or indirect result of the negligence or the failure of, or is caused by, the Party seeking to have its performance obligations excused. Force Majeure Events may include, to the extent consistent with the foregoing requirements (including the requirement that the event or circumstance wholly or partly prevents or delays the performance of the claiming Party), but are not limited to:

- (i) acts of a public enemy, war (whether declared or not), insurrection, riot, civil disturbance, rebellion, violent demonstrations, revolution, sabotage, or terrorist action;
- (ii) acts of God, including any effect of unusually severe natural elements, including earthquakes, floods, hurricanes, pandemics, epidemics, or similar cataclysmic occurrences;
- (iii) acts of any Governmental Authority, including the PSC and acts of any Governmental Authority relating to tariffs whether or not anticipated as of the date of any Transaction Agreement or sanctions or impoundments of imported goods imposed on countries from whom the Seller imports or imported such assets or equipment necessary for the Construction Work and which materially and adversely impacts (other than by the imposition of additional costs) Seller's ability to reach Commercial Operation by the Anticipated COD;
- (iv) (A) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe, (B) explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe, and/or (C) interruption, outage and/or curtailment of Transportation Capacity necessary to effect delivery of Fuel to Seller or any Fuel Affiliate due to a force majeure event as declared by any Transporters;
- (v) Third Party claims of excused performance due to an event that would otherwise qualify as a Force Majeure Event under this Agreement, if a Party's performance under this Agreement is reliant upon such Third Party, the affected Party shall be considered to have suffered a Force Majeure Event under this Agreement, *provided*



that the other Party is promptly notified of such event in accordance with Section 8.2(a);

- (vi) strikes, work stoppages or labor disputes affecting one or more of Seller, Seller's Affiliates or any other Third Party employed or contracted by Seller to construct, work on or provide assistance with the construction, operation and maintenance of the Generation Facility or contracted by Seller to provide equipment, machinery and supplies (including Fuel) for the Generation Facility; and
- (vii) serial equipment defects.

(c) Exclusion. Notwithstanding the definition set forth in Section 8.1(b), a Force Majeure Event does not include, and may not be based on, the following events or conditions:

- (i) Buyer's ability to purchase any or all of the Required Energy or Committed Capacity at a price lower than the price set forth in this Agreement;
- (ii) The economic hardship of a Party;
- (iii) Seller's ability to sell the Required Energy or Committed Capacity under more favorable conditions, or at a price higher than the price set forth in this Agreement;
- (iv) a Forced Outage or Load Transients Outage, except where such Forced Outage is caused by a Force Majeure Event;
- (v) inability or delay by Seller to procure equipment for the Generation Facility or any component parts therefor, unless such inability or delay is itself excused by reason of a Force Majeure Event or any other acts or omissions of any Third Party, including any vendor, landowner, holder of an estate or interest in real property, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of a Force Majeure Event or an event described in (i)(a) or (i)(c) of the definition of "Excusable Delay" in the GE Equipment PSAs;
- (vi) any full or partial curtailment at the Generation Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap, event or condition attributable to normal wear and tear, or flaws including any design flaws (other than as provided in Section 8.1(b)(vii)), unless any of the foregoing is caused by a Force Majeure Event;
- (vii) failure to abide by Prudent Electrical Practices or Prudent Gas Practices;
- (viii) any change in the cost of or demand for labor, materials, steel, rare earth minerals, or power;
- (ix) except as set forth in Section 8.1(b)(iv), any labor strikes, slowdowns or stoppages, or other labor disruptions specifically against Seller or Seller's contractors or subcontractors;
- (x) the imposition on either Party of restrictions or prohibitions under Sanctions if a Party is or becomes a Sanctioned Person;



- (xi) the impact or effect of a pandemic or epidemic known as of the Execution Date to the Party claiming a Force Majeure Event;
- (xii) reduction of Buyer's electricity usage;
- (xiii) the Generation Facility, this Agreement, the Gas Lateral Pipeline or the Data Center is or becomes the subject of a proceeding before any Governmental Authority, including the PSC, unless, Seller, Seller's Affiliates or any other Third Party employed or contracted by Seller to construct, work on or provide assistance with the operation and maintenance of the Generation Facility is enjoined (whether at the inception of any such proceeding or at any time thereafter) or otherwise prohibited from undertaking any one or more of its obligations hereunder, in which case any such proceeding shall be deemed to be a Force Majeure Event; and
- (xiv) Seller's or any of its Affiliates' inability to obtain sufficient labor, equipment, materials or other resources necessary to build and operate, as applicable, the Generation Facility, inclusive of the Seller's Gas Connection, or the Gas Lateral Pipeline (including the timely availability or delivery of any one or all of the foregoing) unless caused by a Force Majeure Event above or as may be claimed by any relevant Third Party pursuant to the force majeure provisions and/or related concepts of any of Seller's or any of its Affiliate's material equipment purchase contracts, supply contracts or any BOP/EPC Contract.

8.2 Conditions; Resolution

(a) Claims of Force Majeure. In addition to the conditions set forth in Section 8.1(a) and in the definition of Force Majeure Event, a Party may rely on a claim of a Force Majeure Event for purposes of this Agreement only to the extent that such Party:

- (i) provides prompt notice of such Force Majeure Event to the other Party giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement and, if applicable, the construction and operation of the Generation Facility; and
- (ii) provides timely updates during the continuance of the Force Majeure Event or its consequences that (A) summarize the measures taken by the affected Party and that the affected Party plans to take in order to mitigate the impact of such Force Majeure Event and (B) provide an estimate of the expected duration of the period during which the performance by the affected Party of its material obligations under this Agreement will be prevented or the construction or operation of the Generation Facility, as applicable, will be adversely affected due to the Force Majeure Event.

(b) Effect of Force Majeure Event. Upon making a proper claim pursuant to Section 8.2(a), such Party's obligations of performance, only to the extent such performance is excused by the Force Majeure Event, shall be suspended for the duration of the Force Majeure Event, subject to the termination rights under Section 8.3.

(c) Resumption of Performance. The affected Party shall provide prompt notice to the other Party once it is able to resume performance of its obligations following the occurrence of a Force Majeure Event or the impact on the construction or operation of the Generation Facility resulting from such Force Majeure Event is resolved, as applicable.



8.3 Termination Due To Force Majeure Event.

In addition to and without limiting any other provisions of this Agreement, if, following the occurrence of Tranche 2 COD, a Party is prevented or delayed from performing its material obligations under this Agreement for a period of [REDACTED] consecutive days or more due to a Force Majeure Event, the unaffected Party may terminate this Agreement, without liability of either Party to the other Party (other than for obligations that arose prior to termination), upon no less than [REDACTED] days' written notice given at any time while such performance continues to be prevented or delayed following the end of the [REDACTED] day period, except that (i) if prior to the expiration of such [REDACTED] day period, the affected Party, at its sole option, has delivered to the unaffected Party a certificate of an Independent Engineer certifying that any remaining repairs or other remediation efforts necessary for the affected Party to resume performance of its obligations under this Agreement can be completed within an additional [REDACTED] day period following the expiration of the initial [REDACTED] day period, then the unaffected Party may not exercise its right to terminate this Agreement under this Section 8.3 unless the affected Party's performance remains prevented or delayed following the expiration of such additional [REDACTED] day period, and (ii) if the affected Party has provided notice that it is able to resume performance of its obligations, and thereafter resumes such performance, as required by Section 8.2(c) prior to the early termination date designated in such notice, then this Agreement will not terminate. If the Agreement terminates pursuant to this Section 8.3, then the Buyout provisions in Section 2.3 shall be applicable.

8.4 Condemnation Events

A Party receiving any notice of a Condemnation Event shall promptly give the other Party notice of the receipt, contents and date of the notice received. If a Condemnation Event occurs resulting in the Generation Facility being rendered unusable for its intended purpose or otherwise incapable of serving Seller's obligations under this Agreement, then this Agreement shall terminate upon no less than [REDACTED] Business Days from the date upon which any such Condemnation Event has occurred. Any Award made in connection with a Condemnation Event shall be addressed in accordance with the provisions of Exhibit I when calculating an applicable Buyout Price as a result of a termination under this Section 8.4.

8.5 Illegality

(a) A Party receiving notice of or otherwise becoming aware of an Illegality shall promptly give the other Party notice of the receipt, contents and date of the notice received, including, as applicable, the basis for any such Illegality. The Parties shall use commercially reasonable efforts in an attempt to have any Illegality vacated, reversed, lifted or permanently stayed, or to make commercially reasonable and mutually agreeable modifications or substitutions to the Agreement to avoid any such Illegality. To the extent the Parties, in coordination, are unable to have any Illegality vacated, reversed, lifted or permanently stayed, either Party shall have the right to terminate this Agreement upon not less than [REDACTED] Business Days' notice to the other Party and any such termination shall be a termination without the fault of either Party.

(b) Any such termination under the provisions of this Section 8.5 shall trigger the Buyout provisions of Section 2.3.

8.6 Market Disruption Event and Market Cessation Event

(a) If a Market Disruption Event has occurred, the Parties shall negotiate in good faith to agree on a replacement index for any such index set out in this Agreement with which to determine any value or price hereunder for the affected day, and if the Parties have not so agreed on or before the second Business Day following the affected day then the replacement index for determining any such price or value hereunder shall be determined



within the next [REDACTED] following Business Days with each Party obtaining, [REDACTED]

(b) Market Cessation Event. If a Market Cessation Event occurs, the Parties shall negotiate in good faith to agree on a replacement index or other solution resulting in the economic effect most closely representing the intention of the Parties as expressed herein. [REDACTED]

(c) New Index. [REDACTED]

**ARTICLE 9
DEFAULT, REMEDIES, AND TERMINATION**

9.1 Events of Default

(a) Mutual Events of Default. The occurrence with respect to a Party of any of the following events or conditions constitutes an event of default with respect to such Party (the events and conditions set forth in this Section 9.1(a), Section 9.1(b), and Section 9.1(c) each an “Event of Default”):

(i) [REDACTED]



(ii) [Redacted text block]

(iii) [Redacted text block]

(iv) [Redacted text block]

(v) [Redacted text block]

(vi) [Redacted text block]

(vii) [Redacted text block]

(b) Seller Events of Default. In addition to the foregoing, the occurrence with respect to Seller of any of the following events or conditions constitutes an Event of Default with respect to Seller:

(i) [Redacted text block]



- (ii) [REDACTED]
- (iii) [REDACTED]
- (iv) [REDACTED]

(c) Buyer Events of Default. In addition to the foregoing, Buyer shall be a Defaulting Party hereunder if the [REDACTED]

9.2 Remedies for Default

(a) Termination for Default. If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (the “Non-Defaulting Party”) may, subject to Section 9.3(a)(i): (i) suspend performance of its obligations under this Agreement; (ii) withhold to the extent of its damages under this Agreement the payment of any amounts due to the Defaulting Party; (iii) terminate this Agreement by delivery of written notice to the Defaulting Party, designating a date no earlier than [REDACTED] ([REDACTED]) days after the notice is deemed delivered as the early termination date in respect of this Agreement, with the remedies in Section 9.2(b) applicable; or (iv) exercise any combination of the foregoing.

(b) Remedies. Upon termination of this Agreement in connection with an Event of Default, the provisions of Section 2.2 and Section 2.3 shall be applicable; and Seller shall remain obligated to comply with Section 7.6(g) and remain liable for damages for any breach thereof, and, *provided further* that if Seller has become Bankrupt and rejected this Agreement pursuant to 11 U.S.C. §365 or equivalent Applicable Law, none of Section 2.3 or the Buyout or any other remedy hereunder stated to be exclusive shall apply or limit Buyer’s rights or remedies, and the Buyer shall be entitled to all of its actual and direct damages on account of Seller’s breach of this Agreement, in each case as expressly limited by the provisions of Section 9.3(a)(i) hereof.

9.3 Limitations

(a) GENERAL LIMITATION.

(i) THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED FOR IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE NON-DEFAULTING PARTY, WITH THE OBLIGOR’S LIABILITY LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE OBLIGOR’S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES ARE THE



SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED AND DISCLAIMED.

- (ii) EXCEPT WITH RESPECT TO CLAIMS FOR INDEMNIFICATION UNDER SECTION 9.4 OR SECTION 9.5(c), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED ON REMEDIES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.
- (iii) TO THE EXTENT ANY DAMAGES A PARTY IS REQUIRED TO PAY HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS AND ARE NOT AND NOT INTENDED TO BE A PENALTY.
- (iv) PRE-COMMERCIAL OPERATION DATE LIMITATION/DELAY LIQUIDATED DAMAGES LIMITATION. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTIONS 7.6(g), 9.2(b), 9.4(a), 9.5(c), OR 11.3, PRIOR TO THE OCCURRENCE OF TRANCHE 2 COD, SELLER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT OR ANY CLAIMS ARISING HEREUNDER REGARDLESS OF THE NATURE OF SUCH CLAIMS FOR DAMAGES IS LIMITED TO AND SHALL NOT EXCEED THE APPLICABLE MAXIMUM PRE-COD DAMAGES CAP, NOTWITHSTANDING THE CREDIT SUPPORT AMOUNT THEN APPLICABLE TO SELLER.

9.4 Indemnification

(a) Indemnification by Seller. To the extent permitted by Applicable Law, Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Buyer Indemnitees") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever, in each case, of a Third Party (including legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought in connection with or arising out of claims or demands asserted or alleged by such Third Parties) (each, a "Liability", and collectively, "Liabilities"), resulting from, or arising out of, or in any way connected with, the performance or nonperformance by Seller (or its Affiliates) of its obligations hereunder or relating to (i) the Construction Work, (ii) a violation of a representation under Article 10 or obligation under Sections 11.2(c) or 11.2(d), or (iii) injury, bodily or otherwise, to, or death of persons, or damage to, or destruction of property or economic loss of property (excluding economic loss or damage respecting contracts or agreements between Buyer Indemnitees and Third Parties) of, any person within the Buyer Indemnitees, in each case excepting such Liabilities to the extent caused by the gross negligence or willful misconduct of any person within the Buyer Indemnitees. Any obligation by Seller to a Buyer Indemnitee shall extend to claims, demands, actions or suits of any nature whatsoever for Liabilities alleged by a Third Party.

(b) Indemnification by Buyer. To the extent permitted by Applicable Law, Buyer shall release, indemnify, defend, and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers,



employees, agents, and representatives (collectively, the “Seller Indemnitees”) against and from any and all Liabilities resulting from, or arising out of, or in any way connected with, the performance or nonperformance by Buyer (or its Affiliates) of its obligations hereunder or relating to (i) a violation of a representation under Article 10 or an obligation under Section 11.2(c) or Section 11.2(d), (ii) Buyer’s negligence or willful misconduct with respect to its operations or work on the Data Facility Site or (iii) injury, bodily or otherwise, to or death of persons, or damage to, or destruction of property or economic loss of property (excluding economic loss or damage respecting contracts or agreements between Seller Indemnitees and Third Parties) of, any person within the Seller Indemnitees, in each case excepting such Liabilities to the extent caused by the gross negligence or willful misconduct of any person within the Seller Indemnitees. Any obligation by Buyer to a Seller Indemnitee shall extend to claims, demands, actions or suits of any nature whatsoever for Liabilities alleged by a Third Party.

(c) Procedure.

- (i) Defense. Any indemnified Party seeking indemnification under this Agreement for any Liabilities shall give the indemnifying Party notice of such Liability promptly, but in any event on or before [REDACTED] days after the indemnified Party’s receipt of notice of any claim related to the Liability (a “Claim”). Such notice shall describe the Liability in reasonable detail and shall indicate the amount (estimated if necessary) of the Liability that has been, or may be, sustained by the indemnified Party. The indemnified Party shall bear responsibility for any incremental increase in the Liability to the extent such increase is attributable to the failure of the indemnified Party to provide timely notice of any Claim. If requested by the indemnified Party, the indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the indemnified Party; *provided, however*, that if the defendants in any such action include both the indemnified Party and the indemnifying Party and the indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the indemnifying Party, the indemnified Party shall have the right to select and be represented by separate counsel, at the indemnifying Party’s expense. In such circumstances, an indemnified Party, at no cost or expense to such Party, shall cooperate with the indemnifying Party and provide the indemnifying Party with such information and assistance as the indemnifying Party may reasonably request in connection with any Claim. An indemnified Party shall in all cases be entitled to control its own defense in any action even if the indemnifying Party pays all indemnification amounts in full. Neither Party may settle or compromise any Liability for which indemnification is sought under this Agreement without the prior written consent of the other Party, including any claims or demands asserted or alleged by a Third Party but for which a suit is never brought. In the event an indemnified Party enters into a binding settlement or compromise of a Liability without the consent of the indemnifying Party, such indemnifying Party shall be relieved of its obligations under Article 9 with respect to such settled or compromised Liability. The indemnified Party shall afford the indemnifying Party and its counsel the opportunity to participate in all aspects of the defense of a Claim, including discussions about the strategy of the defense and reviewing drafts, and being present at, and participating in, all conferences with all persons and parties asserting any Claim against the indemnified Party covered by the indemnities contained in this Section 9.4(c)(i), or subject in all cases to reasonable limitation to the extent of any legal conflict of interests between the indemnified Party or its counsel, on the one hand, and the indemnifying Party or its counsel, on the other hand, conferences with representatives of, or counsel for, such indemnified Party



held in connection with such indemnities, including attending depositions, hearings, and trial, and settlement discussions. Any Claim indemnified against pursuant to this Section 9.4(c)(i) shall be net of, but not limited to, any proceeds of insurance received by an indemnified Party under insurance policies.

- (ii) Failure to Defend. If the indemnifying Party refuses to assume the defense of a claim meriting indemnification, the indemnified Party may at the sole expense of the indemnifying Party, contest, settle, or pay such claim; *provided 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 warrants settlement.

9.5 Step-In Rights.

(a) Step-In Rights upon Termination. If a Party elects to terminate this Agreement as provided herein and prior to the consummation of a Sale in relation to a Buyout, or there has been an Abandonment, Buyer and its Representatives shall have the right upon prior written notice to Seller to enter the Generation Facility Site and do all such things as Buyer may consider reasonably necessary and (i) [REDACTED]

[REDACTED] In the event that Buyer exercises its Step-In Rights, Seller shall not interfere with Buyer's (or its Representatives') construction, maintenance or operation, as applicable, of the Generation Facility and Seller shall reasonably cooperate with Buyer such that Buyer (or its Representatives) may perform the construction, maintenance or operation.

(b) License to Operate [REDACTED]

(c) Indemnification; Standard of Care. Each Party shall indemnify and hold harmless from and against all losses, costs, charges and expenses reasonably incurred by the other Party that are the result of such Party's negligence, gross negligence or willful misconduct, other than losses, costs, charges and expenses which are attributable to the negligence, gross negligence or willful misconduct of the other Party. During such time as Buyer has custody of the Generation Facility Site and the Generation Facility pursuant to this Section 9.5(c), it shall conduct, and shall cause all of its Representatives (including any subcontractors) to conduct, all of its and their activities in accordance with Prudent Electrical Practices and Applicable Law (including, as and if applicable, Trade Controls). If this Agreement is terminated due to (1) a Seller Event of Default, then any costs or expenses reasonably incurred by Buyer in the exercise of its Step-In Rights shall be presumed to be Buyer's Correction Costs, or (2) a failure by Seller under Section 7.3(c)(ii), then any costs or expenses reasonably incurred by Buyer in the exercise of its Step-In Rights shall be presumed to be Buyer's Development Costs, and in each such case, as applicable, the presumption may only be rebutted by Seller demonstrating the negligence, gross negligence or willful misconduct of Buyer with respect to any given item within such Buyer Correction Costs or Buyer Development Costs (as applicable) during the period in which Buyer exercised the Step-In Right.

(d) Operating Materials. Seller shall collect and have available at a convenient, central location at the Generation Facility all Operating Materials in accordance with Prudent Electrical Practices and Prudent Gas



Practices. Upon the exercise by Buyer of the Step-In Rights, Seller shall cause the Generation Facility operator (and any Person within the control of Seller at the Generation Facility) to give Buyer access and control and shall provide reasonable assistance and cooperation to Buyer to the extent reasonably necessary to enable Buyer to exercise such Step-In Rights and shall provide reasonable assistance and cooperation to Buyer to effect safely the transfer of access and control as may be requested by Buyer. Seller shall execute such documents and take such other action as may be reasonably necessary for Buyer to effectuate its rights under this Section 9.5(d).

(e) No Assumption. Buyer's exercise of its Step-In Rights shall not be deemed an assumption by Buyer of any liability of Seller due and owing prior to the exercise of such rights. Buyer shall not assume any liability of Seller for the period during which Buyer exercises such Step-In Rights. During any period that Buyer is exercising its Step-In Rights, Seller shall retain legal title to and ownership of the Generation Facility Site and the Generation Facility, and all of its other property and its revenues. When exercising its Step-In Rights, Buyer shall assume access, possession, operation, and control solely as agent for Seller. In no event shall Buyer's election to exercise the Step-In Rights be deemed to constitute a transfer of ownership of or title to the Generation Facility or any assets of Seller.

ARTICLE 10 REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Seller Representations, Warranties and Covenants

- (a) General Representations. Seller represents and warrants to Buyer as of the Execution Date that:
- (i) Seller is duly organized and validly existing as a limited liability company under the laws of the State of [REDACTED] and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
 - (ii) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and, all such actions have been duly authorized by all necessary proceedings on its part;
 - (iii) this Agreement has been duly and validly executed and delivered by Seller and, as of the Execution Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
 - (iv) there are no actions, suits, proceedings, or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;
 - (v) the execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree, or order to which Seller is a party or by which it is bound or affected;



- (vi) Seller is not a Sanctioned Person;
- (vii) there is no proceeding under applicable bankruptcy or insolvency laws contemplated by Seller or, to Seller's knowledge, threatened against it; and
- (vii) Seller has or will have all legal rights necessary for the Seller to enter upon and occupy the Generation Facility Site for the purpose of constructing, operating, and maintaining the Generation Facility and, as applicable, Seller's Gas Connection for the Term.

(b) Additional Seller Representations, Warranties and Covenants. Seller further represents, warrants, and covenants to Buyer that:

- (i) as of each delivery of Required Energy under this Agreement, the Required Energy is being delivered to Buyer free and clear of any liens, other encumbrances, or defects in title, and all Required Energy supplied shall satisfy the definition of Energy as set out in Section 1.1;
- (ii) the Committed Capacity and Committed Energy will be made exclusively available to Buyer at all times during the Term and during any Extension Term in support of Buyer's self-generation of Energy requirements for the operation of the Data Center Facilities; and
- (iii) each of Seller, and any Person guaranteeing the obligations of Seller under this Agreement, if any, is an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(18).

10.2 Buyer Representations, Warranties and Covenants

(a) General Representations. Buyer represents and warrants to Seller as of the Execution Date that:

- (i) Buyer is duly organized and validly existing as a limited liability company under the laws of the State of [REDACTED] and has the lawful power to engage in the business it presently conducts and contemplates conducting for all purposes of this Agreement and is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (ii) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part and as required by it under Applicable Laws;
- (iii) this Agreement has been duly and validly executed and delivered by Buyer and, as of the Execution Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (iv) Buyer is not a Sanctioned Person;



- (v) there are no actions, suits, proceedings, or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Agreement;
- (vi) the execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, any Applicable Laws to which it is subject, or any covenant, agreement, understanding, decree, or order to which Buyer is a party or by which it is bound or affected; and
- (vii) there is no proceeding under applicable bankruptcy or insolvency laws contemplated by Buyer or, to Buyer's knowledge, threatened against it.

(b) Additional Buyer Representations, Warranties and Covenants. Buyer further represents, warrants, and covenants to Seller that:

- (i) it will be the exclusive purchaser of the Required Energy for the sole purpose of energizing and operating the Data Center and for no other purpose; and
- (ii) each of Buyer and any Person guaranteeing the obligations of Buyer under this Agreement, if any, is an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(18).

10.3 Representation of Function; Limitation on Representations

(a) Seller warrants and represents that Seller's Electric Interconnection Facilities will be constructed to be capable of delivering up to 100% of the Committed Energy to the Data Center at the Delivery Point at the times and in the manner required under this Agreement.

(b) Buyer warrants and represents that Buyer's Electric Interconnection Facilities will be constructed to be capable of receiving up to 100% of the Committed Energy at the Delivery Point at the times and in the manner required under this Agreement.

(c) EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE MADE BY SELLER AS TO THE DELIVERED ENERGY, AND ANY AND ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED AND WAIVED IN ALL RESPECTS.

ARTICLE 11 MISCELLANEOUS

11.1 Notices

All written notices, requests, statements, demands, and other communications under this Agreement must, unless otherwise specified herein, be delivered in person, sent by reliable overnight courier, registered or certified mail, postage prepaid, or electronic mail to the address of the Party specified in Exhibit D. Notice by hand delivery is effective at the close of business on the day actually received by the recipient, if received during a Business Day, and otherwise shall be effective at the beginning of the next Business Day. Notice by overnight United States mail or courier is effective on the next Business Day.



after it was sent. Notice by registered or certified mail, postage prepaid, shall be effective on the third Business Day after it was sent. Notice sent by facsimile transmission or electronic mail will be recognized and shall be deemed effective at the close of business on the day actually received by the recipient, if received during a Business Day, and otherwise shall be effective at the beginning of the next Business Day. A Party may change its addresses by providing written notice of such change of address to the other Party in accordance herewith, but not less than [REDACTED] days prior to the effective date of any such change of address.

11.2 Business Conduct Clauses

(a) **Compliance with Laws.** Each Party shall comply with all Applicable Laws, except to the extent such non-compliance is unrelated to or would not have a material adverse effect on such Party's ability to perform its obligations under this Agreement.

(b) **Nondiscrimination.** Buyer and/or its Affiliates is a federal contractor and maintains an equal opportunity/affirmative action program in accordance with Applicable Law. As a result, Seller must, to the extent required by Applicable Law, afford equal employment opportunity to all of its applicants and employees, regardless of their race, color, national origin, sex, age, religion, marital status, sexual orientation, gender identity and gender expression, protected veteran status, disability, or other basis protected by law. Also, as a result, but only if required by Applicable Law, Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). As of the Execution Date, these regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, as of the Execution Date, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status. In connection with this Agreement and the Construction Work, Seller shall use commercially reasonable efforts to (i) ensure that its contracts or agreements with all of its contractors and their subcontractors contain provisions substantially similar to those set out in this Section 11.2(b) addressing compliance with all laws and regulations relating to forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons, and (ii) enforce such contracts; *provided*, that, to the extent Seller was unable to negotiate such provisions, upon reasonable belief of non-compliance by such contractors and their subcontractors, Seller shall redeploy such contractors and subcontractors to providing goods and services that are not related to this Agreement or terminate any such contractors and subcontractors.

(c) **Anti-Corruption.** Each Party, on behalf of itself and its Affiliates, including its and its Affiliates' owners, directors, officers, employees, representatives, agents, and subcontractors providing services on behalf of, or engaged by, a Party or its Affiliates in connection with this Agreement and any activity contemplated hereunder, represents, warrants and covenants that it, in connection with the negotiation and performance of this Agreement have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value (defined below), directly or indirectly, to or from (a) any Governmental Official to (i) influence any act or decision of a Governmental Official in their official capacity, (ii) induce a Governmental Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any Person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate Applicable Laws regarding anti-corruption and anti-bribery. If a Party fails to comply with this Section 11.2(c) then the other Party may terminate this Agreement immediately upon written notice to such Party, if such failure of compliance is reasonably likely to give rise to a material adverse effect on the non-breaching Party and only if (1) such breach is not reasonably capable of being cured or (2) if it is capable of being cured, if the Defaulting Party fails to cure it in a reasonable period of time. In connection with the performance of this Agreement and all fees charged Buyer, each Party shall maintain books and records practices and internal controls to ensure (i) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (ii) that no "off the books" accounts are created or maintained.



Unless otherwise required by Applicable Law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. A Party will immediately report any actual, threatened, or requested breach of this Section 11.2(c) by a Party or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Governmental Authority. Notice must be provided as required under Section 11.1 and by contacting Legal-Notices@Buyer.com and energylegal@Buyer.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth a Party's knowledge of the incident or incidents and what actions, if any, are being taken in response. Each Party will ensure that the contractors and subcontractors it retains in connection with this Agreement expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If a Party has reason to believe that a breach of this Section 11.2(c) has occurred or will occur, it shall have the right to audit the other Party's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to a breach of this Section 11.2(c), neither Party shall have any further obligations to the other Party hereunder, other than as set out in Section 2.3. "Anything of Value" means and includes, but is not limited to, cash or a cash equivalent (including "grease," "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment. "Governmental Official" means any official or employee of any Governmental Authority of any country, including (A) any official or employee of any government department, agency, commission, or division, (B) any official or employee of any government-owned or -controlled enterprise, (C) any official or employee of any public educational, scientific, or research institution; (D) any political party or official or employee of a political party; (E) any candidate for public office; any official or employee of a public international organization; and (F) any person acting on behalf of or any relatives, family, or household members of any of those listed in clauses (A) through (E) above.

(d) Trade Controls.

- (i) Seller will be responsible for, or will cause its Representatives, and subcontractors, including any BOP/EPC Contractor, providing services to or performing obligations on behalf of Seller or its Affiliates, to be responsible for exporting and importing any equipment or property required in connection with this Agreement, if any, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by Applicable Law with respect to the exporting or importing such equipment or property; *provided, however*, neither Seller nor any of its Representatives, or subcontractors providing goods or services in connection with this Agreement, including any BOP/EPC Contractor, have any Trade Control obligations hereunder related to Buyer's construction or operation of its Data Center Facilities.
- (ii) In no instance may Seller or any Person engaged by Seller or its Representatives or subcontractors in connection with this Agreement list Buyer or any of its Affiliates as the importer or exporter of record on any import, export, customs or other documentation in connection with this Agreement.
- (iii) In no event shall Seller provide equipment or property in connection with this Agreement that (i) is on a Munitions List, or (ii) originated, offloaded or transferred to a different ship or carried in any Sanctioned Territory.
- (iv) At Buyer's request, Seller shall provide Buyer all Trade Control related documentation in Seller's possession as may be required for Buyer or its Affiliates



to comply with (or demonstrate compliance with) or respond to enquiries from any Governmental Authority in relation to any Trade Controls.

- (v) Seller (i) represents and warrants that neither Seller, nor any of its Affiliates' owners, directors, officers, employees, representatives, agents, and subcontractors providing services on behalf of, or engaged by, Seller or its Affiliates in connection with this Agreement, is a Sanctioned Person, and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, Seller and each person or entity engaged by Seller in connection with this Agreement has (A) complied and shall comply with all Trade Controls, and (B) shall not directly engage with any Sanctioned Persons.
- (vi) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.
- (vii) For purposes of this Section 11.2(d), the following terms shall have the following meanings:
 - (A) "Munitions List" means any list of articles, services or technology designated as defense or military articles, technologies, software or services established by Applicable Law, including items listed on the United States Munitions List and/or the Common Military List of the European Union.
 - (B) "Sanctions" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury and the U.S. Department of State), the United Nations, the European Community or, His Majesty's Treasury or any, and each other sanctions authority which has jurisdiction in respect of any Party, this Agreement or the Construction Work.
 - (C) "Sanctioned Person" means any Person (i) that is the target of Sanctions or owned or Controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.
 - (D) "Sanctioned Territory" means any country or territory now or hereafter subject to comprehensive Sanctions.
 - (E) "Trade Controls" means any of the following: (i) Sanctions; (ii) applicable export and import controls of the United States, the United Kingdom, the European Union or the United Nations, and (iii) US antiboycott law; in each case excluding any blocking rules or other countermeasures which are administered or enforced by a Governmental Authority other than of the United States, the United Kingdom, the European Union or the United Nations.
- (viii) Subcontractors. Seller will make commercially reasonable efforts to ensure that any subcontractors it retains in connection with the performance of its obligations under this Agreement agree in writing to the Trade Controls undertakings, representations, and warranties substantially similar to the provisions in this Section 11.2(d); *provided* that an Event of Default will occur only if Seller fails to take such actions



necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of any breach of Trade Controls by a subcontractor of Seller; mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a subcontractor who has violated Trade Controls or become or engaged with a Sanctioned Party.

- (ix) Notice. If (A) either Seller or Buyer becomes aware that any breach of the terms of this Section 11.2(d) has occurred, is likely to occur, or (B) either Seller or Buyer, or any person or entity engaged by either Party in connection with this Agreement has become a Sanctioned Person, in each case, the relevant Party shall provide notice to the other Party of the associated facts and circumstances within three (3) days thereof in accordance with Section 11.1.
- (x) Excusal and Release. Notwithstanding any other provision of this Agreement to the contrary, either Party shall be excused and released, without any liability to the other Party, from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal or not reasonably practicable under Sanctions.
- (xi) Buyer may terminate this Agreement in accordance with the applicable provisions of Section 9.2, upon written notice to Seller, if Seller has breached any of the provisions of this Section 11.2(d)(i), (ii), (iii) or (v), in which event the provisions of Section 2.3 shall apply, save to the extent, in each case, in a manner that is reasonably likely to give rise to a material adverse effect on Buyer but only if (a) such breach is not reasonably capable of being cured or (b) if it is capable of being cured, if Seller fails to cure it in a reasonable period of time; *provided, however*, Buyer shall not be required to consummate the Buyout to the extent (i) Seller is designated as a Sanctioned Person and as a result any such Buyout is prohibited by Applicable Law or (ii) such Buyout would trigger any liability under Trade Controls for Buyer; and *provided further* in each case that Seller shall have a reasonable period of time to remove or rectify the issues presented in (i) or (ii).

(e) Scope Reporting. Upon request, Seller shall provide Buyer Seller's Scope 1, Scope 2 and Scope 3 emissions data from Seller's Generation Facility in support of Buyer's compliance with the Scope Reporting Rule; *provided*, that, Buyer shall fully reimburse Seller for any reasonable incremental costs and expenses incurred in connection with obtaining and providing the Scope 3 emissions data requested by Buyer. Seller shall provide the requested information to Buyer within a reasonable amount of time from the date of Buyer's request but no later than sixty (60) days prior to Buyer's compliance deadline, unless otherwise mutually agreed to by the Parties.

(f) Ongoing Disclosure Obligation. Seller shall promptly disclose to Buyer (but in no case later than two (2) Business Days after Seller obtains actual knowledge, whether obtained orally or in writing) any violation of any Applicable Laws arising out of the construction or operation of the Generation Facility by Seller, its Affiliates, or any contractor of Seller or its Affiliates or the existence of any enforcement, legal, or regulatory action or proceeding relating to the Generation Facility (excluding matters respecting employment law or vehicle municipal code violations), if, in each case, such action or proceeding adversely affects or could reasonably be expected to adversely affect the construction or operation of the Generation Facility or the commercial reputation of Buyer or any of its Affiliates. Within ten (10) Business Days of receipt thereof, Seller shall notify Buyer of any communication received directly or indirectly from any Third Party that is in the nature of a written threat of litigation, a written litigation hold notice, a summons and complaint, or a commencement of a judicial, regulatory,



or arbitration proceeding or investigation against Seller concerning the Generation Facility, the Gas Lateral Pipeline, the BOP/EPC Contract or a Transportation Agreement; *provided* that any failure by Seller under this Section 11.2(f) may be cured pursuant to Section 9.1(a)(iii) and shall not give rise to a Seller fault termination right of Buyer under Section 2.3 and Exhibit I.

(g) Know Your Customer Information. Each Party shall complete requests for refreshes of information about itself, including but not limited to primary points of contacts and ownership information (often referred to as "Know Your Customer" information). Neither Party shall request such information more than once per year, except in connection with an inquiry from a Governmental Authority.

11.3 Confidentiality

(a) Obligation of Confidentiality. Each Party shall hold in confidence all Confidential Information of the other Party. The obligation of confidentiality extends to all Confidential Information, whether exchanged orally or in written or electronic form.

(b) Permitted Disclosure. Each Party has the right to disclose Confidential Information of the other Party to: (i) a Governmental Authority to the extent legally required by the Governmental Authority or under Applicable Law on the condition that, if appropriate, commercially reasonable efforts are undertaken to receive confidential treatment by such Governmental Authority, (ii) its advisors, auditors, legal counsel and insurers, (iii) its Affiliates and its and their respective officers, directors, employees and agents that have a need to know such information, (iv) its service providers to the extent required in connection with the performance of its obligations hereunder, (v) its lenders and bona fide potential investors and lenders that have a need to know such information; and (vi) bona fide potential purchasers (and their representatives set out in clauses (ii), (iii), and (v)) of a direct or indirect interest in receiving Party or, with respect to Seller, the Generation Facility or the Gas Lateral Pipeline. The right of the receiving Party to disclose Confidential Information pursuant to clauses (ii) through (vi) hereof is subject to the condition that the recipient must agree, or otherwise have an obligation, to maintain the confidentiality of the Confidential Information consistent with the terms hereof. In the event that any Party receiving Confidential Information becomes legally compelled under Applicable Law, court order or regulation to disclose any of the Confidential Information, the legally compelled Party shall give the other Party providing the Confidential Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the notice terms hereof.

(c) Liability for Breach. Each Party, as the receiving Party, is liable for any failure by a recipient of Confidential Information disclosed by the receiving Party (other than a Governmental Authority) to maintain the confidentiality of such Confidential Information in accordance with the requirements of this Section 11.3.

(d) Remedies. The Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations contained in this Section 11.3.

(e) Prior Agreements. To the extent that the Parties are party to or otherwise bound by the terms of any agreement regarding confidentiality regarding the subject matter of this Agreement, any such agreement between the Parties is replaced and superseded by the confidentiality provisions of this Section 11.3 and in the event that the Parties are otherwise bound by the terms of an agreement regarding confidentiality, as between the Parties, such other agreement will no longer apply to this Agreement (save for any breach or default thereunder by a Party arising prior to the Execution Date hereof, which breach or default shall remain subject to the terms of such prior agreement and the obligations of confidentiality set out thereunder), and the obligations of the Parties regarding confidentiality will instead be replaced and superseded by the obligations under this Section 11.3.



11.4 Assignment

(a) Consent Required. Except as provided in this Section 11.4, neither Party may assign this Agreement without the other Party's prior written consent, which consent may not be unreasonably delayed, conditioned, or withheld. During the development phase of the Generation Facility and at all times prior to Tranche 2 COD, Seller may not assign this Agreement to a Permitted Transferee without consent of Buyer, such consent not to be unreasonably withheld, delayed or conditioned. Any assignment in violation of this provision is null and void. Except as provided in Section 11.4(b), neither Seller nor Buyer is permitted to suffer any other Change of Control, whether voluntary or by operation of law, without the other Party's prior written consent, which consent may not be unreasonably delayed, conditioned, or withheld. Notwithstanding the foregoing, Neither Party shall be permitted to assign this Agreement, or suffer a Change of Control or any other assignment, transfer, or change of ownership or control, whether direct or indirect, voluntary or by operation of law, if the assignee or the Controlling Person following such a Change of Control is a Sanctioned Person. Each Party shall give the other Party notice of any Change of Control permitted by this Section 11.4, within ten (10) Business Days following the effectiveness thereof.

(b) Permitted Assignment. Notwithstanding the foregoing:

- (i) Subsequent to the Execution Date, the Parties agree that Seller may transfer and assign this Agreement and all of its rights, responsibilities, interests and obligations under this Agreement and the existing Transaction Agreements to its Affiliate, Will-Power UT, LLC, a Delaware limited liability company ("Will-Power"), without the need for the consent of Buyer or any Affiliate of Buyer (the "Will-Power Assignment"). From and after the date of the Will-Power Assignment, [REDACTED] will be released from any and all obligations and liabilities (including the Liabilities) associated with this Agreement and the obligations hereunder in full and Will-Power will be deemed to be the Seller hereunder for all purposes, as if Will-Power were the Seller hereunder as of the Execution Date.
- (ii) After Tranche 2 COD, Buyer's consent is not required (A) for Seller to (I) assign this Agreement to a Permitted Transferee generally or in connection with the sale of the Generation Facility to such Permitted Transferee, or (II) assign this Agreement to an Affiliate of Seller, in each case, subject to the condition that in connection with any such assignment, such assignee has assumed in writing all of the obligations of Seller under this Agreement (including Seller's obligations under Section 6.1) and agreed to be bound by all the terms and conditions of this Agreement accruing or arising from and after the effectiveness of such assignment; (B) for Seller to undergo a Change of Control or for Seller or one of its Affiliate to participate in an Allowed Transaction if the surviving entity or purchaser is a Permitted Transferee; or (C) in connection with bona fide mortgage, pledge or grant of security interest in this Agreement by Seller. Seller shall notify Buyer of any such assignment or Change of Control by no later than thirty (30) Business Days after the consummation thereof.
- (iii) After Tranche 2 COD, Seller's consent is not required for Buyer to (A) to assign this Agreement to an Affiliate of Buyer, subject to the condition that in connection with any such assignment, such assignee has assumed in writing all of the obligations of Buyer under this Agreement (including Buyer's obligations under Section 6.2) and agreed to be bound by all the terms and conditions of this Agreement accruing or arising from and after the effectiveness of such assignment or (B) undergo a Change of Control, subject to the condition that this Agreement remains in full force and effect and that any purchaser or owner of the surviving entity satisfies all of the



Credit Support requirements hereunder. Buyer shall notify Seller of any such assignment or Change of Control by no later than thirty (30) days after the consummation thereof.

- (iv) Following a permitted assignment under this Section 11.4(b), the assignor shall be fully released from all obligations and liabilities under this Agreement arising after the effective date of any such permitted assignment; *provided, however*, the assignor shall remain liable and responsible for all obligations and liabilities arising under this Agreement prior to any such assignment, even if any such liability or obligation is discovered subsequent to the date of any such assignment.

11.5 Waiver of Rights

Failure by a Party to exercise any of its rights or remedies under this Agreement does not constitute a waiver of such rights or remedies. Neither Party will be deemed to have waived any right or remedy to which it may be entitled, any provision of this Agreement, or any failure of default of the other Party unless it has made such waiver specifically in writing or unless such waiver is specifically provided for under the terms of this Agreement.

11.6 Section Headings

The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein and are to be ignored for the purposes of construction.

11.7 No Third Party Beneficiary

This Agreement is for the sole and exclusive benefit of the Parties and is not intended to create a contractual relationship with, or cause of action or other rights in favor of, any Person other than the Parties. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any Person not a Party to this Agreement. No undertaking by one Party to the other Party under this Agreement shall constitute the dedication of that Party's assets or any portion thereof to the public.

11.8 Forward Contract

Each Party intends to the extent applicable that: (a) this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" and each Party is a "forward contract merchant" within the meaning of the Bankruptcy Code; and (b) all payments made or to be made by a Party pursuant to this Agreement, including the application by a Party of Credit Support to any amounts due and owing to such Party, constitute "settlement payments" within the meaning of the Bankruptcy Code and all transfers of Credit Support by a Party or on its behalf under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code.

11.9 Governing Law; Jury Waiver

(a) Governing Law. THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION) GOVERN ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ITS INTERPRETATION, CONSTRUCTION, PERFORMANCE, AND ENFORCEMENT.



(b) Jury Waiver. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE IMPLEMENTATION OF THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

11.10 Venue

The Parties submit to the exclusive jurisdiction of the state and federal courts sitting in the Borough of Manhattan, New York City, New York. Each Party waives (i) any objection it may have at any time to the laying of any suit, action, or other proceedings brought in any such courts; (ii) any claim that such suit, action, or other proceeding has been brought in an inconvenient forum; and (iii) any right to object, with respect to such suit, action, or other proceeding, that the court does not have any jurisdiction over the Party. This Section 11.10 does not prohibit a Party from bringing an action to enforce a money judgment in any other jurisdiction or with respect to Section 11.15(g).

11.11 Nature of Relationship

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement will not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Neither Party has any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

11.12 Severability

Subject to the provisions of Section 8.5 to the contrary, should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement will not be affected and will continue in full force and effect. The Parties shall, however, in good faith attempt to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses and, if applicable, monetary compensation corresponding as closely as possible to the sense and purpose of the affected provision.

11.13 Change in Law

(a) The Parties agree that the Monthly Charges will not be affected by any Change in Law that alters either Buyer's or Seller's costs in connection with this Agreement, Seller's operation of the Generation Facility, or the value of the Required Energy, delivered or transferred under this Agreement, or affects in any other material way the purpose or economics of this Agreement. Notwithstanding the foregoing, if a Change in Law occurs, then Seller shall take such actions as are necessary to cause the Generation Facility to be in compliance with the Change in Law following the effective date of such Change in Law. If the cumulative Compliance Costs associated with the Generation Facility for Changes in Law is less than the Change in Law Threshold, Seller shall be solely responsible for such costs. In the event the Compliance Costs apportioned to the Generation Facility are greater than the Change in Law Threshold, Seller shall provide to Buyer the Compliance Cost Estimate for the Generation Facility reflecting (but in no event shall any cost be accounted for in more than one of the following categories): (i) such capital expenses in excess of the Change in Law Threshold, (ii) the depreciable life of the capital investment required by such Change in Law for the remaining Term of this Agreement in connection with amounts in excess of the Change in Law Threshold, (iii) any increases in variable operation and maintenance costs in excess of the Change in Law Threshold, (iv) Seller's commercially reasonable return on investment in connection with the



amounts in excess of the Change in Law Threshold, (v) financing costs (if applicable) in connection with the amount in excess of the Change in Law Threshold, and (vi) all other direct costs actually incurred by Seller associated with the Compliance Cost Estimate in connection with the amount in excess of the Change in Law Threshold, less \$ [REDACTED] (collectively, the "Change in Law Rate Calculation"), which Change in Law Rate Calculation shall be amortized over all of the then-remaining calendar months of the Term and expressed as an increase to the applicable Monthly Charges. If the Change in Law Rate Calculation reflects Compliance Cost above the Change in Law Threshold that increases the applicable Monthly Charges less than or equal to [REDACTED] percent ([REDACTED]%) above the then current rate of such applicable Monthly Charges, the Compliance Costs shall be borne by the Buyer. If the Change in Law Rate Calculation results in an increase to the applicable Monthly Charges of greater than [REDACTED] percent ([REDACTED]%) above the then current Monthly Charges ("Increased Monthly Charge Cap"), Buyer will have the options available to it under Section 11.13(b).

(b) No later than [REDACTED] ([REDACTED] days following receipt of Seller's Compliance Costs Estimate and the Change in Law Rate Calculation showing that Seller expects the Compliance Costs to exceed the Increased Monthly Charge Cap, Buyer shall either (i) elect to increase the applicable Monthly Charges consistent with the Change in Law Rate Calculation to the proposed applicable Monthly Charges that are in excess of the Increased Monthly Charge Cap or (ii) elect not to increase the applicable Monthly Charges in excess of the Increased Monthly Charge Cap and notify Seller of such election. If Buyer notifies Seller that it will accept the increase to applicable Monthly Charges, the Increased Monthly Charge Cap will no longer be a limit on Seller's obligations under Section 11.13(a). If Buyer either fails to notify Seller of its election within the foregoing [REDACTED] ([REDACTED] days following receipt of the Change in Law Rate Calculation or notifies Seller that it will not pay such Compliance Costs resulting in an increase in the Monthly Charges above the Increased Monthly Charge Cap, then the Monthly Charges will all respectively increase up to the Increased Monthly Charge Cap; *provided*, that either Party may terminate this Agreement within [REDACTED] ([REDACTED] days without liability of either Party to the other Party except as otherwise provided under Section 2.3 (other than for obligations that arose prior to such termination (including Buyer's reimbursement obligations under Section 11.13(a) above)), such termination to be effective as of the date of any such failure by the notifying Party or notice from a Party to the other Party.

(c) If Buyer has notified Seller of its election under clause (i) of Section 11.13(b) above, no later than [REDACTED] ([REDACTED] days after completion of the Change in Law capital improvements, Seller shall amend the Change in Law Rate Calculation to be consistent with Seller's actual costs and provide to Buyer with a new calculation of the applicable Monthly Charges, which can be higher or lower than the initial Change in Law Rate Calculation proposed for such applicable Monthly Charges, that fully captures the Compliance Costs less that portion of the Compliance Costs apportioned to Seller pursuant to Section 11.13(a), and the actual increase or decrease to the previously agreed increased applicable Monthly Charges in excess of the Increased Monthly Charge Cap. It is the intent of the Parties that any increase in any applicable Monthly Charges based upon the foregoing calculations shall enable Seller to fully recover all costs incurred to comply with the Change in Law less the portion of the Change in Law Threshold allocated to Seller pursuant to Section 11.13(a).

(d) If a Change in Law occurs before the first anniversary of the last increase in the applicable Monthly Charges that creates savings for Seller, economic benefits for Seller, decreases costs of performance or offsets prior increases in costs to performance set forth in a previous increase in applicable Monthly Charges, Buyer may, within [REDACTED] ([REDACTED] days after such Change in Law, provide written notice to Seller, and the previously implemented



increases in applicable Monthly Charges shall be decreased to provide an economic benefit to Buyer equal to the decreases in costs or offsets the Change in Law provides to Seller.

(e) To the extent the Parties are unable to agree between themselves, they shall use the dispute resolution procedures set forth in Section 11.15(a), or, if applicable, Section 11.16(b) as if the matter in dispute was the Buyout Price.

(f) For purposes of this Section 11.13:

- (i) Any rules, regulations, statutes, guidelines, procedures, policies or other processes required by or implemented in accordance with Rule 111 of the Clean Air Act (as amended, modified and restated prior to or after the Execution Date) shall not, for any purpose of this Agreement, be deemed to be an Existing Change in Law and, to the extent any of the foregoing, once implemented impact or require the Generation Facility to undertake compliance actions, all such actions and activities shall be treated as a Change in Law and therefore subject to the provisions of Sections 11.13(a) and 11.13(b) hereof;
- (ii) Subject to Section 11.13(f)(i) above, the provisions of this Section 11.13 shall not apply to any Change in Law occurring prior to the Execution Date (each such Change in Law being an “Existing Change in Law”) required by any such Change in Law, whether any such rules, regulations, statutes, guidelines, procedures, policies or other processes are implemented prior to or after the Execution Date. Notwithstanding any provisions of this Agreement to the contrary, no such post-Execution Date rules, regulations, statutes, guidelines, procedures, policies or other processes in respect of any Existing Change in Law shall serve to modify the compliance obligations of a Party with the requirements of any Existing Change in Law or otherwise serve to shift any such obligations from one Party to the other Party, save to the extent otherwise specifically set out in Section 11.13(f)(i) above; and
- (iii) Any change to any Import Tariff shall be deemed to not be a Change in Law and shall not otherwise be subject to the provisions of this Section 11.13 in any manner but rather shall be accounted for in accordance with the provisions of Section 7.8.

11.14 Counterparts; Electronic Signatures

This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original and all of which when taken together constitute but a single agreement. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually executed counterpart. This Agreement may be stored by the Parties electronically and the reproduction in tangible form of an electronically stored version of this Agreement will be deemed to be an “original” for all purposes. The Parties agree that this Agreement may be executed and delivered by electronic signatures and that the signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

11.15 Dispute Resolution.

(a) Management Negotiations. The Parties shall use all reasonable efforts to settle disputes through negotiation between authorized members of each Party’s senior management having authority to resolve any such dispute without further approval. Either Party may, by written notice to the other Party, request a meeting to initiate



negotiations to be held within [REDACTED] ([REDACTED]) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within [REDACTED] ([REDACTED]) Business Days of their first meeting, either Party may, by written notice to the other Party, refer the matter to mediation pursuant to Section 11.15(b). The first referral made by either Party shall control. Sections 11.15(a) and 11.15(b) shall not apply to any disputes arising under Section 11.2(d) and either Party may commence proceedings immediately for any such disputes.

(b) Mediation. If either Party elects to refer the dispute to mediation, the Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals proposed by the International Chamber of Commerce, or any other mutually acceptable organization, within [REDACTED] ([REDACTED]) days after the request for mediation is made. Unless otherwise agreed, the mediation will be scheduled for a date not later than [REDACTED] ([REDACTED]) days after the selection of the mediator. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party.

(c) Qualification. Any mediator selected pursuant to Section 11.15(b) must have recognized expertise and not less than ten (10) years of experience in the subject matter of the dispute and must also be neutral and have no prior connection with or financial or other interests in or against either Party.

(d) Confidential Nature of Proceedings. All communications, offers and statements, whether oral or written, and documents and other writings exchanged between the Parties in connection with the management negotiations pursuant to Section 11.15(a) or the mediation pursuant to Section 11.15(b) shall be confidential and shall not be discoverable, admissible in evidence or used or referred to in any subsequent binding adjudicatory process between the Parties; *provided, however*, that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in such negotiations.

(e) Other Remedies. If the Parties have not resolved the dispute within [REDACTED] ([REDACTED]) days following receipt of the dispute summaries, subject to the limitations in this Agreement, and except as otherwise provided in this Agreement, then the Parties may pursue all other rights available at law or in equity.

(f) Exclusion. Following mediation, either Party may bring suit in a court of competent jurisdiction, subject to the requirements set forth in Section 11.10 and Section 11.15(d). The Parties agree to exclude the mediator's decision from evidence submitted in judicial proceedings, and documents and statements shared during mediation or negotiations shall not be admissible as evidence except to the extent otherwise discoverable under the applicable rule of discovery and civil procedure.

(g) Injunctive Relief. Notwithstanding the foregoing, either Party may seek injunctive relief with respect to any disputed matter without following the dispute resolution procedure set forth in this Section 11.15. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach, and that any liability limits contained herein shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations hereunder. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief that damages constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense.

11.16 Technical Expert Buyout Price Resolution/Resolution of Other Disputes.

(a) Management Negotiations. If a dispute arises as to the amount of the Buyout Price, either Party may first seek resolution of any such dispute under the provisions of Section 11.15(a) before undertaking the resolution under Section 11.16(b) below.



(b) **Technical Expert.** If the Parties have been unable to reach a resolution of the dispute over the Buyout Price under Section 11.15(a) or have a dispute as to a replacement index or New Index, either Party may require that such dispute be resolved pursuant to this Section 11.16(b). Such dispute will be determined by a single, independent technical expert, who shall be a mutually acceptable Third Party with training and experience in the disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation, opinion or determination (the “Technical Expert”), and the Technical Expert’s determination shall be (i) made (A) in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on the date a Party provides notice of its intent to submit the dispute to a technical expert, if the dispute is as to the Buyout Price, or (B) in accordance with the provisions of Section 11.16(c) if related to a dispute as to a replacement index or New Index, and (ii) binding upon the Parties. Either Party may commence this Section 11.16(b) process as to clause (i)(A) above with AAA by notifying AAA and the other Party in writing (“Technical Dispute Notice”). If the Parties cannot agree on a Technical Expert within five (5) days after the date of the Technical Dispute Notice, then the AAA’s arbitration administrator shall send a list and resumes of three (3) available Technical Experts meeting the qualifications set forth in this Section 11.16(b) to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the Technical Expert. If one or both Parties have failed to respond to the AAA’s arbitration administrator within five (5) days after receiving the list or both Parties strike the same name, the AAA’s arbitration administrator will choose the Technical Expert from the remaining names. Within thirty (30) days of the appointment of the Technical Expert, each Party shall submit to the Technical Expert a written report containing its position with respect to the dispute, and arguments therefor together with supporting documentation and calculations. Discovery shall be limited to documentation relating to the disputed matter. Within thirty (30) days from receipt of such submissions, the Technical Expert shall select one or the other Party’s position with respect to the dispute, whereupon such selection shall be a binding determination upon the Parties for all purposes hereof. The costs of the determination by the Technical Expert of any dispute, including fees and expenses, shall be borne by the Party whose position was not selected by the Technical Expert. If the Technical Expert fails to render a decision within sixty (60) days from receipt of each Party’s submissions, either Party may initiate litigation in accordance with the provisions herein. All deadlines specified in this Section 11.16(b) may be extended by mutual agreement of the Parties. During the pendency of the Technical Expert dispute resolution, failure to pay disputed amounts shall not give rise to an Event of Default.

(c) If the dispute is as to a replacement index or New Index (as set out in clause (i)(B) of Section 11.16(b) above), the Technical Expert shall, in addition to the qualifications set out in Section 11.16(b) above, (i) have at least five (5) years of relevant experience in the buying/selling and/or trading of Capacity, Energy and Fuel in the relevant market(s), (ii) be familiar with the different publishers of pricing rates and indices for Capacity, Energy and Fuel, (iii) not be a current or former Affiliate or Representative of either of the Parties, and (iv) not be a party to a Transportation Agreement. If the Parties cannot mutually agree on a single Technical Expert, each Party will select its own Technical Expert and the Parties’ Technical Experts will select a third Technical Expert whose decision (without participation or input from the Parties’ Technical Experts) shall make the necessary determination of the replacement index or New Index. No more than thirty (30) days following the date upon which the Technical Expert has been chosen and received written documentation from each of the Parties as to any replacement index or New Index, the Technical Expert (without participation or further input from the Parties) will determine which Party’s submitted replacement index or, if applicable, New Index will thereafter be applicable. For the avoidance of doubt, the Technical Expert must choose one of the replacement indices or the New Index, as applicable, proposed by the Parties and will not be permitted to propose any other replacement index or New Index. Any replacement rate or New Index determined by the Technical Expert shall be implemented by the Parties not later than the first day of the second month following the date of any such determination.

11.17 Further Assurances

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and



desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 11.17.

11.18 Financial Accounting Standards

Seller will provide Buyer sufficient financial and ownership information as reasonably requested so that Buyer may determine whether Buyer or an Affiliate must consolidate Seller's financial information, and in connection with any such determination. Any information provided to Buyer pursuant to this Section 11.18 is Confidential Information.

11.19 Contractual Construction

This Agreement was jointly prepared by the Parties by and through their respective legal counsel, and any uncertainty or ambiguity existing herein will not be interpreted against either Party on the basis that such Party drafted the language. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of this Agreement.

11.20 FERC Standard of Review; Mobile-Sierra Waiver

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified inter alia in *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish*, 128 S. Ct. 2733, 171 L. Ed. 2d 607 (2008) and *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 130 S. Ct. 693, 78 U.S.L.W. 4038 (2010) (the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, *provided* that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).

11.21 Time is of the Essence

Time is of the essence to the performance of this Agreement.

11.22 Entire Agreement; Integration; Amendment and Restatement



(a) This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof is binding upon the Parties, unless such amendment, addition, or modification is in writing and signed by a duly authorized officer or representative of each Party.

(b) This Agreement amends, restates, supersedes, and replaces in its entirety, the Original PPA.

[signature page follows]



The Parties have caused this Amended and Restated Power Purchase Agreement to be executed by their duly authorized Representatives as of the date set out below, and agree this Amended and Restated Power Purchase Agreement is effective as of the Execution Date.

SELLER:

[Redacted signature block] DS

Title: Vice President
Date: 02/06/2026

BUYER:

[Redacted signature block]

Title: Authorized Representative
Date: 02/06/2026



Exhibit A

[REDACTED]

The Data Center Site is that certain plot of land owned by Buyer and located immediately west and northwest of the Generation Facility Site that is depicted below and located at [REDACTED]

[REDACTED]

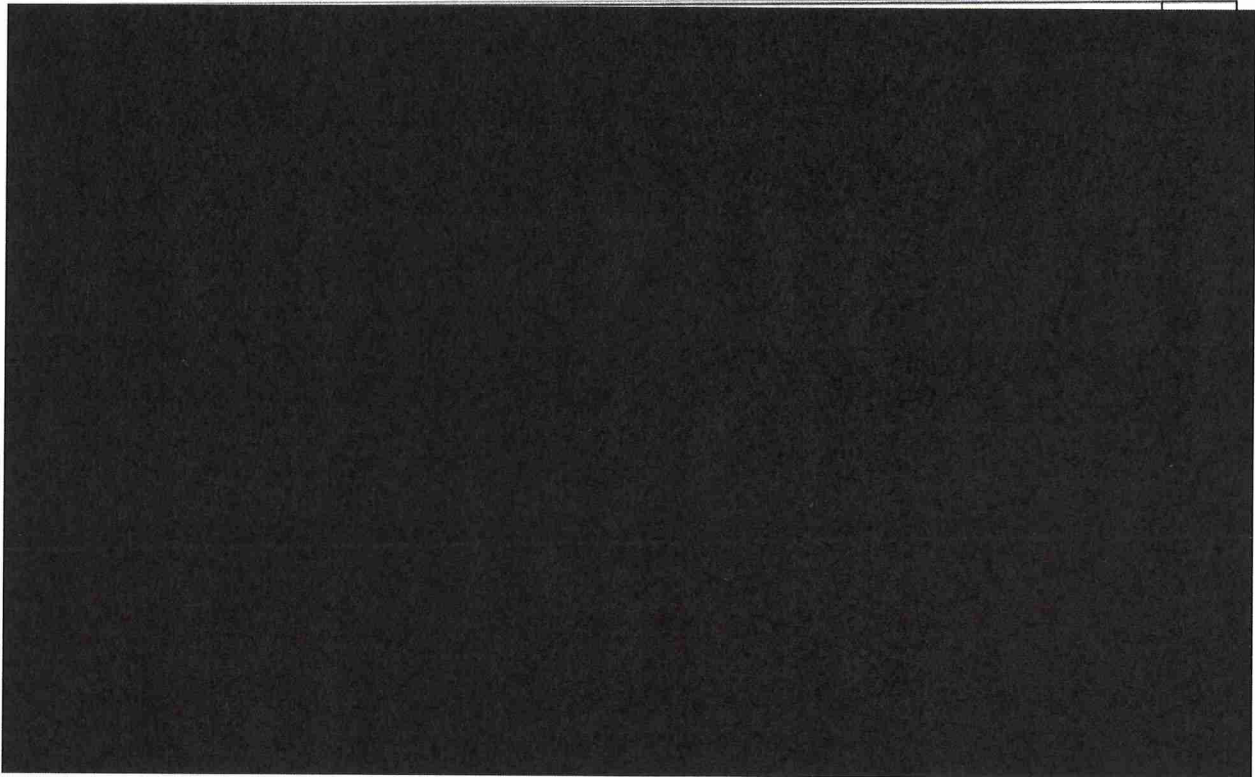




Exhibit B-1

[REDACTED]

The project is a dedicated electrical generating facility designed and capable of delivering the Committed Capacity with an availability of 99.9%. [REDACTED]

[REDACTED] The power generation facility is designed to operate above 50% based on equipment manufacturers specification and guarantees and in accordance with air permitting requirements of the project power generation facility.

The [REDACTED] the [REDACTED] Seller shall be entitled to change the project equipment configuration and manufacturers to the extent reasonably required to satisfy its obligations under this Agreement.

The [REDACTED]
[REDACTED]



Exhibit B-2

[REDACTED]

The Generation Facility Site is the [REDACTED] acre site of land to be owned by Seller as depicted in the image below located at [REDACTED]

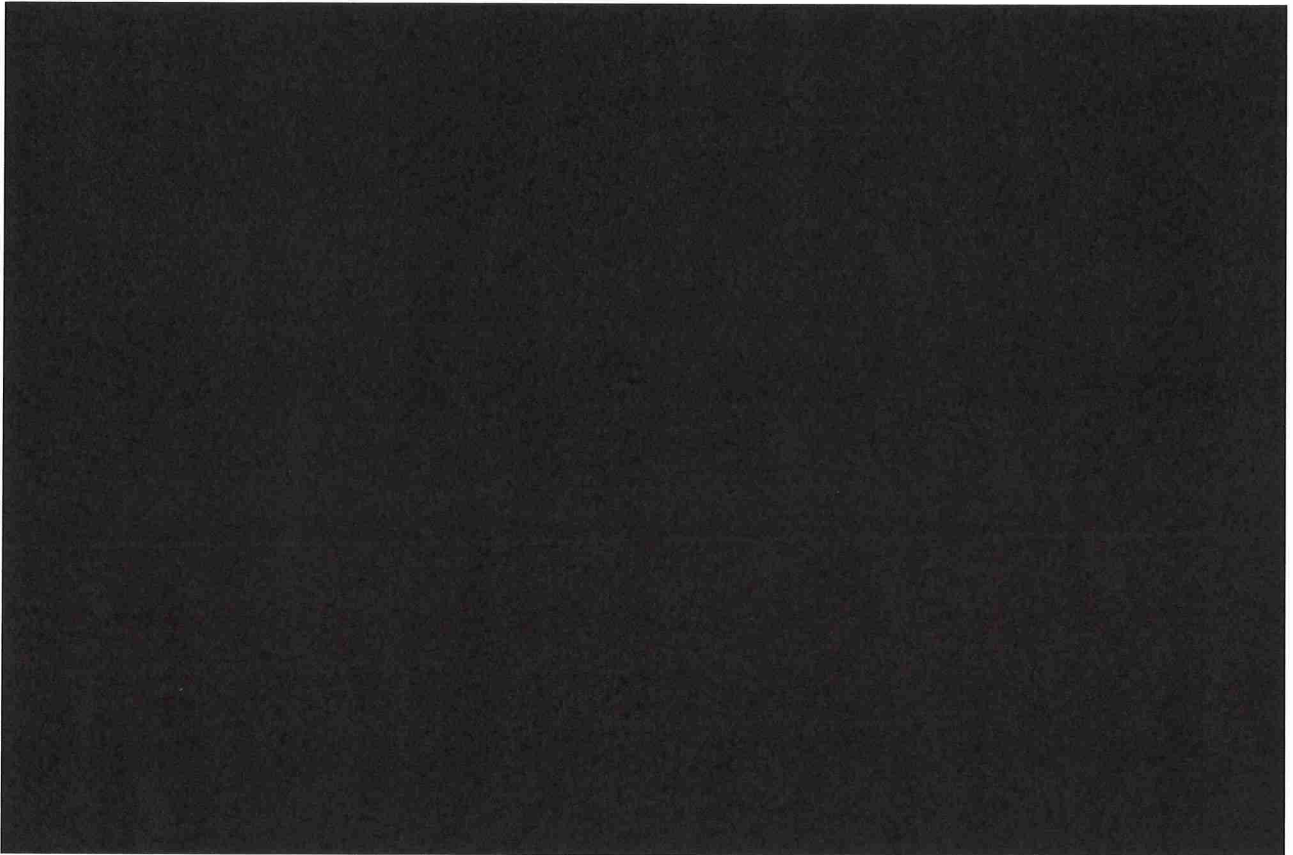




Exhibit C-1

SELLER INSURANCE REQUIREMENTS

Seller Insurance. Seller shall at all times during the Term maintain or cause to be maintained the following insurance policies:

(c) Workers' Compensation insurance complying with the laws of the state(s) having jurisdiction for all employees of Seller or its Affiliates engaged in any work in connection with the Generation Facility and employer's liability insurance with limits of not less than [REDACTED]

[REDACTED]

(d) Commercial General Liability insurance with limits of not less than [REDACTED] and general and products-completed operations annual aggregates of [REDACTED]

[REDACTED]

(e) Automobile Liability insurance with a combined single limit of not less than [REDACTED]

[REDACTED]

(f) Excess or Umbrella Liability insurance [REDACTED]

[REDACTED]

(g) Property insurance written on an all risk policy forms [REDACTED]

[REDACTED]

General Conditions. The conditions described below shall apply to the insurance requirements in Section 7.1(e):

(a) Waiver of all of insurers' rights of subrogation or recovery shall apply to all insureds whether or not the insurance is required under this Agreement.

(b) Seller may obtain all or part of the insurance required under this Agreement under a commercial insurance policy(ies) or self-insurance.

(c) Commercial, general liability, automobile and excess liability insurance coverage required hereunder shall (i) include [REDACTED]

[REDACTED]



Exhibit C-2

BUYER INSURANCE REQUIREMENTS

Buyer Insurance. Buyer shall at all times during the Term maintain or cause to be maintained the following insurance policies:

(a) Workers' Compensation insurance complying with the laws of the state(s) having jurisdiction for all employees of Buyer or its Affiliates engaged in any work in connection with the Generation Facility and employer's liability insurance with limits of not less than [REDACTED]

[REDACTED]

(b) Commercial General Liability insurance with limits of not less than [REDACTED]

[REDACTED]

(c) Automobile Liability insurance with a combined single limit of not less than [REDACTED]

[REDACTED]

(d) Excess or Umbrella Liability insurance with a combined single limit of [REDACTED]

[REDACTED]

(e) Property insurance written on an all risk policy forms [REDACTED]

[REDACTED]

General Conditions. The conditions described below shall apply to the insurance requirements in Section 7.1(e):

(a) Waiver of all of insurers' rights of subrogation or recovery shall apply to all insureds whether or not the insurance is required under this Agreement.

(b) Buyer may obtain all or part of the insurance required under this Agreement under a commercial insurance policy(ies) or self-insurance.

(c) Commercial, general liability, automobile and excess liability insurance coverage required hereunder shall (i) include [REDACTED]

[REDACTED]

INB3789630

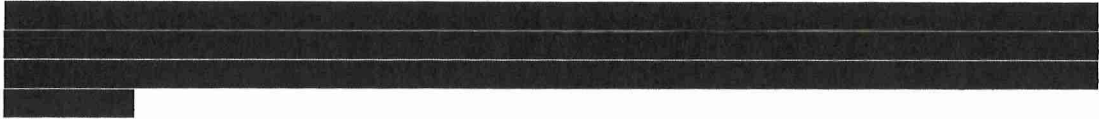
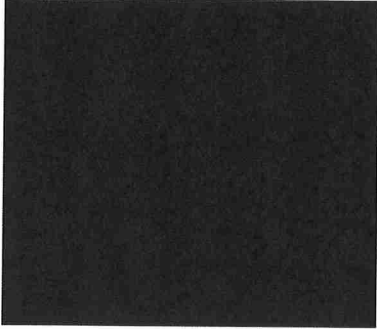




Exhibit D
NOTICE INFORMATION

If to Buyer:



If to Seller:

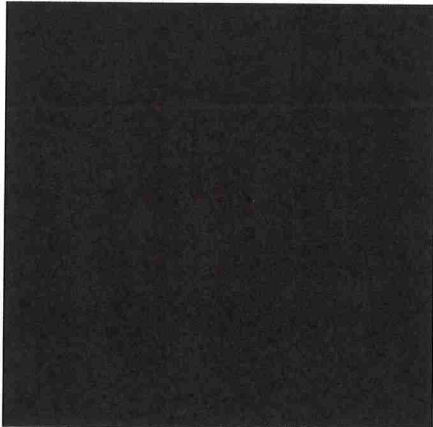




Exhibit E

[Redacted]

1. Monthly Demand Payment

[Redacted]

[Redacted]

[Redacted]

2. [Redacted]

[Redacted]

3. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



[Redacted text block]

4. [Redacted text]

[Redacted text block]

[Redacted text block]

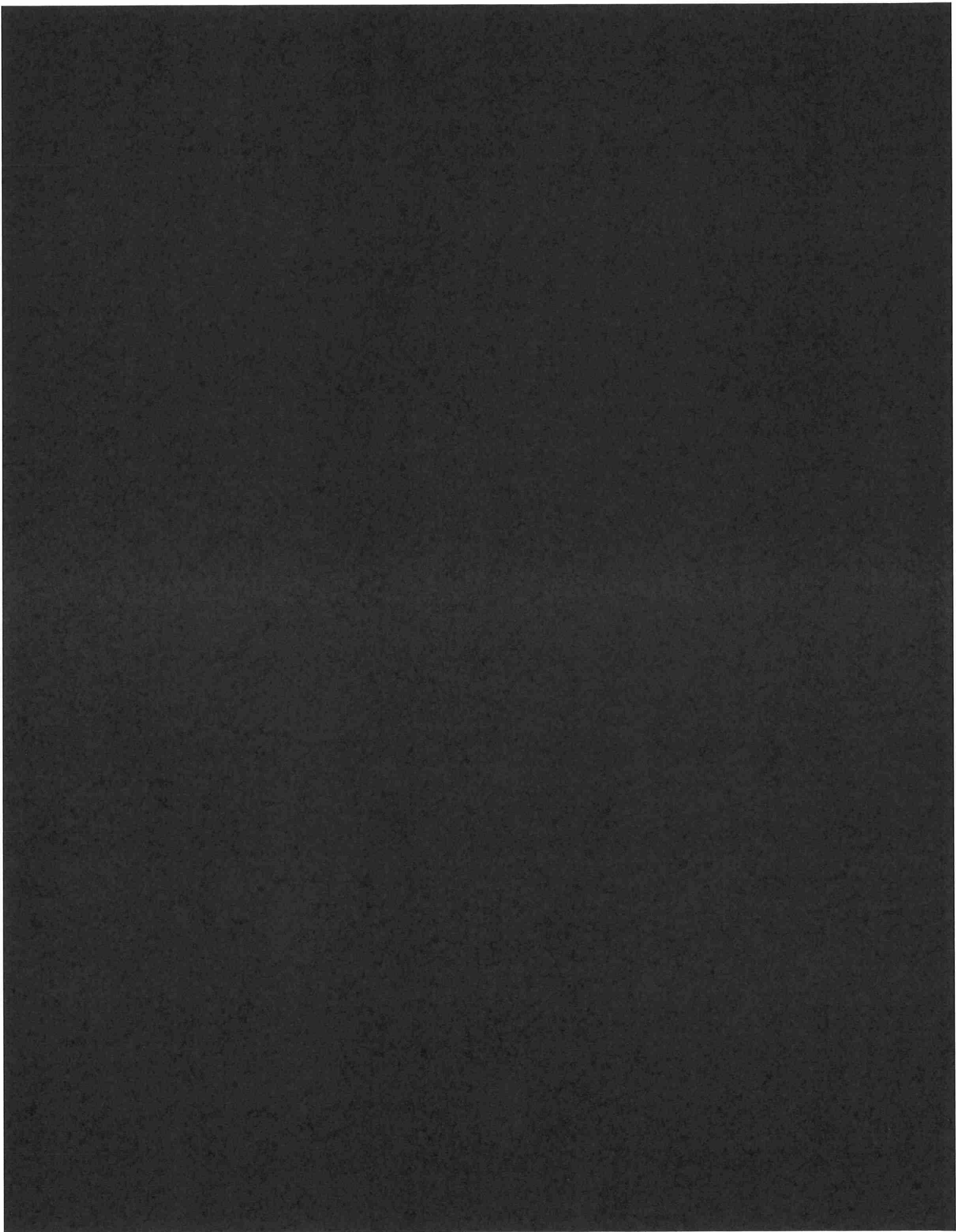
5. [Redacted text]

[Large redacted text block]

[Redacted text]

[Large redacted text block]







[Redacted text block]

