**BUILD TRANSFER AGREEMENT**

**by and between**

**[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**

**as Seller,**

**and**

**PacifiCorp d/b/a Rocky Mountain Power,**

**as Purchaser**

**[\_\_\_\_\_\_\_\_\_\_\_], 2019**

**[NAME OF PROJECT]**

[County], [State]

TABLE OF CONTENTS

**Page**

[ARTICLE I DEFINITIONS; USAGE 4](#_Toc532309618)

[1.1 Definitions 4](#_Toc532309619)

[1.2 Rules as to Usage 20](#_Toc532309620)

[1.3 Schedules and Exhibits 22](#_Toc532309621)

[1.4 Interpretation of FERC Orders 22](#_Toc532309622)

[ARTICLE II PURCHASE AND SALE; PURCHASE PRICE; CLOSING 22](#_Toc532309623)

[2.1 Purchase and Sale; Project Contracts; Excluded Assets; Excluded Liabilities; Assumed Liabilities. 22](#_Toc532309624)

[2.2 Purchase Price 25](#_Toc532309625)

[2.3 Allocation of Purchase Price 25](#_Toc532309626)

[2.4 The Closing 26](#_Toc532309627)

[2.5 Closing Deliveries 26](#_Toc532309628)

[2.6 Further Assurances; Post-Closing Cooperation 29](#_Toc532309629)

[ARTICLE III 30](#_Toc532309630)

[REPRESENTATIONS AND WARRANTIES OF SELLER 30](#_Toc532309631)

[3.1 Existence 30](#_Toc532309632)

[3.2 Authority 30](#_Toc532309633)

[3.3 Limited Purpose Entity 31](#_Toc532309634)

[3.4 Binding Agreement 31](#_Toc532309635)

[3.5 No Conflicts 31](#_Toc532309636)

[3.6 Governmental Approvals and Filings 31](#_Toc532309637)

[3.7 Legal Proceedings 32](#_Toc532309638)

[3.8 Compliance with Laws 32](#_Toc532309639)

[3.9 Title to Project Assets 32](#_Toc532309640)

[3.10 Real Property. 32](#_Toc532309641)

[3.11 Sufficiency of Project Assets. 33](#_Toc532309642)

[3.12 No Seller Material Adverse Effect. 34](#_Toc532309643)

[3.13 Contracts. 34](#_Toc532309644)

[3.14 Permits. 36](#_Toc532309645)

[3.15 Insurance 37](#_Toc532309646)

[3.16 Resource Data 37](#_Toc532309647)

[3.17 Environmental Attributes 38](#_Toc532309648)

[3.18 Environmental Matters 38](#_Toc532309649)

[3.19 Employee and Employee Benefits Matters. 40](#_Toc532309650)

[3.20 Brokers 41](#_Toc532309651)

[3.21 Intellectual Property 41](#_Toc532309652)

[3.22 Due Diligence 41](#_Toc532309653)

[3.23 Reports. 41](#_Toc532309654)

[3.24 Disclosure 41](#_Toc532309655)

[3.25 Anti-Corruption 41](#_Toc532309656)

[3.26 Solvency 42](#_Toc532309657)

[3.27 Seller’s Parent Guaranty and Purchaser Security Agreements 42](#_Toc532309658)

[ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER 42](#_Toc532309659)

[4.1 Existence 43](#_Toc532309660)

[4.2 Authority 43](#_Toc532309661)

[4.3 Binding Agreement 43](#_Toc532309662)

[4.4 No Conflicts 43](#_Toc532309663)

[4.5 Governmental Approvals and Filings 44](#_Toc532309664)

[4.6 Legal Proceedings 44](#_Toc532309665)

[4.7 Brokers 44](#_Toc532309666)

[4.8 Financial Resources 44](#_Toc532309667)

[4.9 Solvency 44](#_Toc532309667)

[ARTICLE V COVENANTS 44](#_Toc532309668)

[5.1 Efforts to Close and Fulfillment of Conditions 44](#_Toc532309669)

[5.2 Consents and Approvals 45](#_Toc532309670)

[5.3 Reserved. 45](#_Toc532309672)

[5.4 Filings 45](#_Toc532309673)

[5.5 HSR Filings 45](#_Toc532309674)

[5.6 Limitation 46](#_Toc532309675)

[5.7 Title Report, Survey, Title Insurance Commitment and Title Insurance Policy Matters. 46](#_Toc532309676)

[5.8 Conduct of Business 47](#_Toc532309677)

[5.9 Purchaser’s Inspection Right 49](#_Toc532309678)

[5.10 Insurance 50](#_Toc532309679)

[5.11 Certain Schedule Updates; Update of Seller’s Disclosure Schedule. 51](#_Toc532309680)

[5.12 No Solicitation of Competing Transaction 52](#_Toc532309681)

[5.13 Tax Covenants 52](#_Toc532309682)

[5.14 Release of Credit Support Obligations. 52](#_Toc532309683)

[5.15 Reports; Authorizations. 53](#_Toc532309684)

[5.16 Reimbursement of Purchaser-Paid Construction Costs 53](#_Toc532309685)

[5.17 Interconnection Agreement 53](#_Toc532309685)

[ARTICLE VI CONDITIONS TO CLOSING 53](#_Toc532309686)

[6.1 Purchaser’s Conditions Precedent 53](#_Toc532309687)

[6.2 Seller’s Conditions Precedent 55](#_Toc532309688)

[6.3 Delayed Closing and Commercial Operation 56](#_Toc532309689)

[ARTICLE VII TERMINATION 57](#_Toc532309690)

[7.1 Termination Prior to Closing 57](#_Toc532309691)

[7.2 Effect of Termination or Breach Prior to Closing 59](#_Toc532309692)

[ARTICLE VIII INDEMNIFICATION 59](#_Toc532309693)

[8.1 Indemnification by Seller 59](#_Toc532309694)

[8.2 Indemnification by Purchaser 60](#_Toc532309695)

[8.3 Method of Asserting Claims 60](#_Toc532309696)

[8.4 Limitations of Liability 61](#_Toc532309697)

[8.5 Indemnification in Case of Certain Liability 62](#_Toc532309698)

[8.6 Determination of Losses 63](#_Toc532309699)

[ARTICLE IX TAX MATTERS 63](#_Toc532309700)

[9.1 Representations and Warranties 63](#_Toc532309701)

[9.2 Transfer Taxes 65](#_Toc532309702)

[9.3 Seller’s Tax Indemnification 65](#_Toc532309703)

[9.4 Cooperation 66](#_Toc532309704)

[9.5 Covenants 66](#_Toc532309705)

[9.6 Survival of Obligations 66](#_Toc532309706)

[9.7 Adjustments to Purchase Price 66](#_Toc532309707)

[ARTICLE X SURVIVAL Periods; NO OTHER REPRESENTATIONS 66](#_Toc532309708)

[10.1 Survival of Representations, Warranties, Covenants and Agreements 66](#_Toc532309709)

[10.2 No Other Representations 67](#_Toc532309710)

[ARTICLE XI DISPUTE RESOLUTION 68](#_Toc532309711)

[11.1 Dispute Resolution 68](#_Toc532309712)

[11.2 Governing Law 68](#_Toc532309713)

[11.3 Venue 68](#_Toc532309714)

[11.4 Waiver of Trial by Jury 68](#_Toc532309715)

[ARTICLE XII LIMITED REMEDIES AND DAMAGES 69](#_Toc532309716)9

[12.1 Exclusive Remedies 69](#_Toc532309717)

[12.2 Limitation of Liability 69](#_Toc532309718)

[12.3 Specific Performance 70](#_Toc532309719)

[ARTICLE XIII MISCELLANEOUS 70](#_Toc532309720)

[13.1 Notices 70](#_Toc532309721)

[13.2 Payments 71](#_Toc532309722)

[13.3 Entire Agreement 71](#_Toc532309723)

[13.4 Expenses 71](#_Toc532309724)

[13.5 Public Announcements 71](#_Toc532309725)

[13.6 Confidentiality 72](#_Toc532309726)

[13.7 Waivers 72](#_Toc532309727)

[13.8 Amendment 72](#_Toc532309728)

[13.9 No Construction Against Drafting Party 72](#_Toc532309729)

[13.10 No Third Party Beneficiary 73](#_Toc532309730)

[13.11 Headings 73](#_Toc532309731)

[13.12 Invalid Provisions 73](#_Toc532309732)

[13.13 Assignment 73](#_Toc532309733)

[13.14 Counterparts 74](#_Toc532309734)

[13.15 Time of Essence 74](#_Toc532309735)

[13.15 No Partnership or Joint Venture 74](#_Toc532309735)

Exhibits

Exhibit A – Form of Seller’s Parent Guaranty[[1]](#footnote-1)

Exhibit B – Form of Bill of Sale

Exhibit C – Forms of Assignment and Assumption Agreements

[Exhibit D – Form of Bargain and Sale Deed][[2]](#footnote-2)

Exhibit E – Form of EPC Agreement

Exhibit F– Form of Construction Completion Agreement

Exhibit G – Form of O&M Agreement

[Exhibit H – Form of Turbine Supply Agreement

Exhibit I – Form of Service and Maintenance Agreement][[3]](#footnote-3)

Exhibit J – Form of Security Agreement

Exhibit K – Form of Deed of Trust

Exhibit L – Form of Pledge Agreement

Exhibit M-1 – Form of Oil and Gas Accommodation Agreement

Exhibit M-2 – Form of Mineral Accommodation Agreement

schedules TO ASSET PURCHASE AGREEMENT

Schedule 1.1(a) – Excluded Assets

Schedule 1.1(b) – Permitted Liens

Schedule 1.1(c) – Project Contracts[[4]](#footnote-4)

Schedule 1.1(d) – Project Fixtures and Equipment

Schedule 1.1(e) – Project Improvements

Schedule 1.1(f) – Project Intellectual Property

Schedule 1.1(g) – Project Permits; Purchaser Permits

Schedule 1.1(h) – Project Real Property Agreements

Schedule 1.1(i) – Project Site

Schedule 1.1(j) – Purchaser’s Knowledge

Schedule 1.1(k) – Reports

Schedule 1.1(l) – Resource Data

Schedule 1.1(m) – Seller’s Knowledge

Schedule 1.1(n) – Approved Vendors[[5]](#footnote-5)

Schedule 1.1(o) – Mineral Operators

Schedule 2.2.1 – Payment Conditions and Requirements

Schedule 5.10 – Construction Insurance Requirements[[6]](#footnote-6)

Schedule 5.14 – Credit Support Obligations

Schedule 6.3 – Liquidated Damages

SELLER’S DISCLOSURE SCHEDULE

Section 3.5  – Seller’s Consents

Section 3.6 – Seller’s Governmental Approvals and Filings

Section 3.14.3 – Existing Insurance Policies

Section 3.18.8 – Threatened and Endangered Species

Section 9.1 – Tax Matters

PURCHASER’S DISCLOSURE SCHEDULE

Section 4.4  – Purchaser’s Consents

Section 4.5 – Purchaser’s Governmental Approvals and Filings

**BUILD TRANSFER AGREEMENT**

**THIS BUILD TRANSFER AGREEMENT** (the “Agreement”) is made and entered into effective as of [\_\_\_\_\_\_\_\_\_], 2019 (the “Execution Date”), by and between **[SELLER NAME]**, a [state] [entity type] (“Seller”), and **PacifiCorp d/b/a Rocky Mountain Power**, an Oregon corporation (“Purchaser”). Seller and Purchaser are also each referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS**

A. Purchaser is a public utility engaged in the generation, transmission, distribution and sale of electric energy, capacity and ancillary services in the state of Utah.

B. Seller holds or will as of the Closing hold all assets, properties, rights and interests of every kind, nature, character and description (whether real, personal, or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site (as defined below)) which relate to or are used or held for use in connection with a [ground-mounted solar photovoltaic][[7]](#footnote-7) [wind-powered][[8]](#footnote-8) electric generating facility to be located in [County], [State] and known as [Common Name], which is nominally rated at approximately [\_\_\_] MW (dc) (the “Project”).[[9]](#footnote-9)

C. Seller desires to sell and assign to Purchaser, and Purchaser desires to purchase and assume from Seller, all assets, properties, rights and interests of every kind, nature, character and description (whether real, personal, or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site (as defined below)) of Seller which relate to or are used or held for use in connection with, and certain specified liabilities related to, the Project, all on the terms and subject the conditions set forth in this Agreement.

D. As an inducement to Purchaser to enter into this Agreement and consummate the transactions contemplated by this Agreement: (i) Seller’s Parent Guarantor, who will derive direct and indirect benefits from Seller entering into this Agreement, is guaranteeing all obligations, including the indemnity obligations, of Seller in this Agreement, on the terms and subject to the conditions of the Seller’s Parent Guaranty; (ii) Seller has granted to Purchaser a security interest in the Project Assets, on the terms and subject to the conditions of the Security Agreement; (iii) Seller has granted a mortgage interest in the Project Site, on the terms and subject to the conditions of the Deed of Trust; and (iv) Pledgor, who will derive direct and indirect benefits from Seller entering into this Agreement, has pledged to Purchaser one hundred percent (100%) of the ownership interest in Seller, on the terms and subject to the conditions of the Pledge Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

**AGREEMENT**

1. DEFINITIONS; USAGE
	1. Definitions

. Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 1.1.

“Accommodation Agreement” means an accommodation agreement with regard to oil and gas or mineral extraction rights at or below the Project Site and associated surface use rights, executed by and between Seller and one or more Mineral Owners and/or Mineral Operators that is substantially and in all material respects in the form attached hereto as Exhibit M-1 (Oil & Gas) or Exhibit M-2 (Minerals).

“Accommodation Payment” means any payment made by or on behalf of Purchaser on or before the date that is sixty (60) months following the Closing Date to any Mineral Operator or Mineral Owner not party to an Accommodation Agreement as of the Closing Date to the extent such payment results from Purchaser’s ownership, use or operation of the Project (as the Project is situated on the Closing Date) on portions of the Project Site at or below which such Mineral Operator or Mineral Owner owns or controls oil and gas or mineral extraction rights.

“Acquisition Proposal” means any offer, proposal, inquiry or indication of interest from any third party relating to any transaction involving any acquisition or purchase by any Person (other than Purchaser or an Affiliate of Purchaser) of the Project, the Project Site or the Project Assets, or any interest therein.

“Action” means any suit, claim, proceeding, arbitration, audit or investigation by or before any Governmental Authority or arbitral tribunal.

“Affiliate” of any Person means any other Person directly or indirectly Controlling, directly or indirectly Controlled by or under direct or indirect common Control with such Person; provided, however, with respect to Purchaser, the term “Affiliate” does not include Berkshire Hathaway Inc. or any of its affiliates (other than PacifiCorp and any direct or indirect subsidiaries of PacifiCorp), and no provision of this Agreement shall apply to, be binding on, create any liability of or otherwise restrict the activities of Berkshire Hathaway Inc. or any of its affiliates (other than PacifiCorp and any direct or indirect subsidiaries of PacifiCorp).

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

“Ancillary Agreements” means those other documents, instruments, certificates or agreements as may be executed and delivered by one or both Parties in connection with this Agreement and the transactions contemplated hereby, including the Bill of Sale, the Assignment and Assumption Agreements, the Bargain and Sale Deed, the Construction Agreements, the Construction Completion Agreement, and the O&M Agreement.

“Assignment and Assumption Agreements” has the meaning set forth in Section 2.5.1(b).

“Assumed Liabilities” has the meaning set forth in Section 2.1.4(b).

“Bankruptcy” means, with respect to a Person, that such Person (a) commences a voluntary case under the Bankruptcy Code; (b) files a petition seeking to take advantage of any Bankruptcy Laws; (c) consents to or fails to contest in a timely and appropriate manner any petition filed against it in an insolvency case under the Bankruptcy Laws; (d) applies for, or consents to or fails to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of itself or of a substantial part of its assets; (e) admits in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; (f) makes a general assignment for the benefit of creditors; (g) takes any action for the purpose of effecting any of the foregoing; or (h) has a case or other proceeding commenced by a third party against it seeking (i) relief under any Bankruptcy Laws or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person of all or any substantial part of its assets, and such case or proceeding continues undismissed or unstayed for a period of sixty (60) days.

“Bankruptcy Code” means Title 11 of the United States Code, as amended from time to time, or any similar federal or state law for the relief of debtors.

“Bankruptcy Laws” means the Bankruptcy Code and all other liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions in effect from time to time.

“Bargain and Sale Deed” means the grant, bargain, sale deed in substantially and all material respects in the form of Exhibit D to this Agreement.[[10]](#footnote-10)

“Begin Construction Guidance” means Section 48 of the Code (including Section 48(a)(2), (5), and (6)), Section 45 of the Code (including Section 45(b)(5) and (d)), and Internal Revenue Service Notices 2013-29, 2013-60, 2014-46, 2015-25, 2016-31 and 2017-04, and any amendment, clarification, addition or supplement thereto, or replacement thereof.[[11]](#footnote-11)

“Bill of Sale” has the meaning set forth in Section 2.5.1(a).

“Books and Records” means any and all data, books, records, files, documents, instruments, papers, correspondence that can be reasonably and practically provided, journals, deeds, licenses, Permits, Resource Data, computer files and programs, studies and reports (including environmental and construction studies and reports), annual operating plans, monthly operating reports, operating logs, operations and maintenance records, purchase orders, safety and maintenance manuals, incident reports, standard OSHA logs, engineering design plans, blue prints and as-built plans, records, drawings, specifications, test reports, quality documentation and reports, hazardous waste disposal records, training records, procedures and similar items, in each case, (a) in all formats in which they are reasonably and practically available, including electronic, where applicable, and (b) in the possession or control of Seller or its Affiliates and to the extent the same relates to Seller, the Project Site or the Project, including the Project Assets, but excluding any Excluded Assets.

“Business Day” means any day except Saturday, Sunday or a weekday that banks in either or both Salt Lake City Utah, or New York, New York are authorized or obligated to close.

“Claim” means any demand, claim, action, investigation, legal proceeding (whether at law or in equity) or arbitration.

“Claim Threshold” has the meaning set forth in Section 8.4.1.

“Closing” has the meaning set forth in Section 2.4.

“Closing Completion” has the meaning set forth in the EPC Agreement.[[12]](#footnote-12)

“Closing Date” has the meaning set forth in Section 2.4.

“Closing Deadline” means [\_\_\_\_\_\_\_\_\_\_].[[13]](#footnote-13)

“Closing Payment” means the Payment payable to Seller at the Closing, subject to the terms and conditions of Schedule 2.2.1.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” means the date on which the Project has achieved [Substantial Completion][[14]](#footnote-14) [Project Mechanical Completion][[15]](#footnote-15) (as such term is defined in the EPC Agreement) pursuant to and in accordance with the EPC Agreement.

“Commercial Operation Deadline” means the [Guaranteed Substantial Completion Date][[16]](#footnote-16) [Guaranteed Mechanical Completion Date][[17]](#footnote-17) (as such term is defined in the EPC Agreement).

“Commercial Operation Payment” means the Payment to be made in connection with the occurrence of the Commercial Operation Date, subject to the terms and requirements of Section 2.2.1 and Schedule 2.2.1.

“Confidentiality Agreement” means the [Nondisclosure Agreement] dated as of [\_\_\_\_\_\_\_\_\_], 2018, by and between Purchaser and Seller.

“Construction Agreements” means the EPC Agreement, [the Turbine Supply Agreement, the Service and Maintenance Agreement][[18]](#footnote-18) and the O&M Agreement.

“Construction Completion Agreement” means the Construction Completion Management Agreement by and between Seller and Purchaser, which shall be substantially and in all material respects in the form of Exhibit F.

“Construction Contractors” means every Person (other than Seller or Purchaser) who is party to a Construction Agreement, including the EPC Contractor [and the Turbine Supplier].[[19]](#footnote-19)

“Construction Costs” means the aggregate of any and all costs and expenses incurred or accrued by or on behalf of Seller, any of its Affiliates or any other Person to site, design, develop, engineer, procure, supply, construct, interconnect, permit, startup, commission or test the Project or any parts or components thereof or materials used therein (including the Project Assets), in each case, in order for the Project (including the Project Assets) to achieve Substantial Completion and Final Completion, including all amounts owing under the Project Contracts; provided, however, that “Construction Costs” shall not include any such amounts owing under the Construction Agreements that are the result of any Change Order (as it (or any similar term) is defined in the Construction Agreements) that is issued by Purchaser after the Closing Date without the express written consent of Seller and such Change Order (as it (or any similar term) is defined in the Construction Agreements) results in an increased payment obligation due to the Construction Contractor (other than such Change Orders (as it (or any similar term) is defined in the Construction Agreements) that are necessary to maintain the Project schedule or ensure compliance with the requirements of this Agreement).

 “Contract” means any agreement, lease, license (other than a Permit), note, bond, evidence of Indebtedness, mortgage, indenture, security agreement, purchase order, binding bid or other instrument or contract, whether written or oral.

“Control” of any Person means the possession, directly or indirectly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any secured lender of such Person.

“Credit Support Obligations” means any and all obligations relating to deposits, guaranties, letters of credit, bonds, indemnities, other credit assurances of a comparable nature (including cash posted as credit support) made or issued by or on behalf of Seller or any Affiliate of Seller for the benefit of the Project.

“Deed of Trust” means the deed of trust by and between Seller and Purchaser, in the form attached hereto as Exhibit K.

“Default Rate” means the lesser of: (a) the prime rate under “Money Rates” as reported in the Wall Street Journal on the first Business Day of the month during which interest is payable plus two percent (2%); and (b) the maximum rate of interest permitted to be charged by applicable Law.

“Disclosure Schedule Update” has the meaning set forth in Section 5.11.2.

“Easements” means easements, rights-of-way, licenses, occupancy or encroachment permits, or similar entitlements which are used, or to be used, for or in the development, construction, ownership, operation, use or maintenance of the Project.

 “Environmental Condition” means the Release to the environment of Hazardous Materials, including any migration of Hazardous Materials through air, soil or water.

“Environmental Attributes” means any and all attributes of the Project (including all renewable energy credits and similar credits associated with such attributes) that are created or otherwise arise from the Project’s generation of electricity using [solar][[20]](#footnote-20) [wind][[21]](#footnote-21) generation technologies, including any avoided, reduced, displaced or off set emissions of pollutants to the air, soil or water such as sulfur dioxides (SO2), nitrogen oxides (NOx), carbon monoxide (CO), mercury (Hg), carbon dioxide (CO2), any other greenhouse gas (GHG) that contributes to the actual or potential threat of altering the Earth’s climate, and any other pollutant that is now or may in the future be regulated under federal, state or local pollution control Laws, regulations or ordinances, including those implemented under the federal Clean Air Act, 42 U.S.C. § 7401 et seq. and any equivalent state Laws, or any voluntary rules, guidelines or programs. Forms of Environmental Attributes include any and all environmental air quality credits, green credits, carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (a) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil gas, chemical, or other substance, and (b) attributable to the generation, purchase, sale or use of [solar][[22]](#footnote-22) [wind][[23]](#footnote-23) energy generated by use of [solar][[24]](#footnote-24) [wind][[25]](#footnote-25) generation technologies by the Project, or otherwise attributable to the Project. Environmental Attributes include those currently existing or after-arising under local, state, regional, federal, or international legislation or regulation or voluntary program, including any such legislation, regulation or program administered by the United Nations Framework Convention on Climate Change, the United States Environmental Protection Agency, or any other Governmental Authority.

“Environmental Law” means any applicable Law that is in effect as of the Closing Date and relates to pollution, occupational safety, protection of occupational health or the protection of the environment, including, without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., (b) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401 et seq. (“CAA”), (e) the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. § 5101 et seq., (f) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., (g) the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629, (h) the Oil Pollution Act, 33 U.S.C. § 2701 et seq., (i) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (j) the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j, (k) the Federal Insecticide, Fungicide, & Rodenticide Act, 7 U.S.C. § 136 et seq., (l) the Endangered Species Act, 16 U.S.C. § 1531 et seq., (m) the Clean Water Act, 33 U.S.C. § 1251 et seq., (n) National Environmental Policy Act, 42 U.S.C. § 55 et seq., (o) the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., (p) the Bald and Golden Eagle Protection Act, (q) Archeological Resources Protection Act, 16 U.S.C. § 470aa et seq., (r) National Historic Preservation Act, 54 U.S.C. § 300101 et seq., and (s) state equivalents to items (a) through (r).

“Environmental Permit” means any Permit pertaining to any Environmental Law.

“EPC Agreement” means [that certain Engineering, Procurement and Construction Agreement][[26]](#footnote-26) [Balance of Plant Engineering, Procurement and Construction Agreement][[27]](#footnote-27) by and between Seller and the EPC Contractor, which shall be substantially and in all material respects in the form of Exhibit E.

“EPC Contractor” means the counterparty (other than Seller) to the EPC Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any entity that, together with a Person, would be deemed a single employer within the meaning of Code Section 414(b), (c), or (m) or ERISA Section 4001(b).

“ESA” has the meaning set forth in Section 6.1.15.

“Excluded Assets” means the items listed on Schedule 1.1(a).

“Excluded Liabilities” has the meaning set forth in Section 2.1.4(a).

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

[“Facility” means “facility” within the meaning of Code Section 45(d)(1) and Internal Revenue Service Revenue Ruling 94-31.][[28]](#footnote-28)

“Federal Power Act” means the Federal Power Act of 1935, as amended.

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

 “Final Completion” has the meaning set forth in the EPC Agreement.

“Final Completion Date” has the meaning set forth in the EPC Agreement.

“Fundamental Purchaser Representations” means the representations and warranties set forth in Section 4.1 (Existence), Section 4.2 (Authority), Section 4.3 (Binding Agreement) and Section 4.7 (Brokers).

“Fundamental Seller Representations” means the representations and warranties set forth in Section 3.1 (Existence), Section 3.2 (Authority), Section 3.3 (Limited Purpose Entity), Section 3.4 (Binding Agreement), Section 3.9 (Title to Project Assets), Section 3.10.1 (Real Property) and Section 3.20 (Brokers).

“GAAP” means generally accepted accounting principles in the United States of America applied on a consistent basis.

“Good Operating Practices” means, with respect to the Project, the practices, methods and acts generally engaged in or approved by a significant portion of the electric power industry in the United States for similarly situated facilities in the United States during a particular period, or any of such practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with applicable Law, reliability, safety, environmental protection, economy and expedition, the Project Contracts and the other Contracts affecting the construction, ownership, use, operation and maintenance of the Project. Without limiting the foregoing, Good Operating Practices are not intended to be limited to the optimum practices, methods or acts, to the exclusion of all others, but rather to include a spectrum of possible practices, methods or acts generally acceptable in the region during the relevant period in light of the circumstances.

“Governmental Authority” means any federal or state entity, authority, agency, court, tribunal, department, board, commission or other body or political subdivision thereof, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“Hazardous Materials” means: (a) any substance, emission or material defined as or listed in any Environmental Law as a “regulated substance,” “hazardous substance,” “toxic substance,” “pesticide,” “hazardous waste,” “hazardous material,” “waste,” “pollutant,” “contaminant” or words of similar import in any Environmental Law; or (b) any products or substances containing petroleum, friable asbestos, polychlorinated biphenyls or radioactive materials.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.[[29]](#footnote-29)

 “Indebtedness” means any of the following: (a) any indebtedness for borrowed money, whether secured or unsecured; (b) any obligations evidenced by bonds, debentures, notes or other similar instruments; (c) any obligations to pay the deferred purchase price of property or services, except trade accounts payable, accrued compensation or similar obligations arising in the ordinary course of business, consistent with past practice; (d) any obligations as lessee under capitalized leases; (e) any obligations, contingent or otherwise, under acceptances, letters of credit or similar facilities; (f) any obligations created or arising under conditional sale or title retention agreements; (g) any net obligations payable under any rate, currency, commodity or other swap, option or derivative agreement; (h) any obligations secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (other than Permitted Liens); and (i) any guaranty of any of the foregoing.

“Indemnified Party” has the meaning set forth in Section 8.3.1.

“Indemnifying Party” has the meaning set forth in Section 8.3.1.

“Independent Accounting Firm” means such nationally recognized, independent accounting firm as is mutually appointed by Purchaser and Seller for purposes of this Agreement.

“Insurance Policies” has the meaning set forth in Section 5.10.2.

“Intellectual Property” means: (a) patents and industrial designs (including any continuations, divisionals, continuations-in-part, renewals, reissues and applications for any of the foregoing); (b) copyrights (including any registrations and applications for any of the foregoing); (c) trademarks, service marks, trade names, logos, slogans, trade dress and applications for registration of the foregoing; and (d) trade secrets and confidential information, including confidential know-how, processes, formulae, algorithms, models or methodologies.

“Interconnection Agreement” means a final generator interconnection agreement to be entered into between Seller and Transmission Provider, which provides, among other things, for the electrical interconnection of the full amount of electrical capacity from the Project to the transmission system of Transmission Provider at the Point of Interconnection, which amount shall not be less than the Planned Project Size of electrical capacity.

“ITC” means the energy credit pursuant to Section 48 of the Code.

“Law” means any applicable statute, law, treaty, rule, code, common law, ordinance, regulation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority, including each Environmental Law.

“Liability” means any Indebtedness and other obligations of a Person (whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due).

“Lien” means any mortgage, pledge, deed of trust, hypothecation, assignment, deposit arrangement, charge, security interest, encumbrance, lien (statutory or other) or preference, priority or other security agreement of any kind or nature whatsoever, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing or the filing of any financing statement or similar instrument under the Uniform Commercial Code as in effect in any relevant jurisdiction or comparable Law of any jurisdiction, domestic or foreign.

“Loss” means any judgment, amount paid in settlement, damage, fine, penalty, deficiency, replacement power cost, Liability, loss or expense (including interest, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment).

“Mineral Operator” means all Persons which own, lease or control oil and gas or mineral extraction rights at or below the Project Site and which have active wells or drilling rigs or mining activities located on the Project Site, or have received a permit to drill or to extract minerals from the State of [\_\_\_\_\_\_\_\_\_\_] for the same, including the Persons listed on Schedule 1.1(o).

“Mineral Owner” means all Persons (other than the Federal Government) which own or lease oil and gas or mineral extraction rights at or below the Project Site and whose oil and gas or mineral extraction rights are not controlled by a Mineral Operator.

“Mineral Rights Negotiation Process” means the following actions to be taken (in sequential order) by Seller with respect to each Mineral Operator and Mineral Owner with the intent of executing and delivering an Accommodation Agreement for the Project with each Mineral Operator and Mineral Owner on or before the Closing Date: (a) delivery to such Mineral Operator or Mineral Owner of a form of non-disclosure agreement and the form of Accommodation Agreement in the form attached hereto as Exhibit M-1 or Exhibit M-2, including information regarding the Project location; (b) negotiation and execution of a non-disclosure agreement; (c) mutual exchange of information regarding oil and gas and mineral rights extraction location and operational data as well as any other relevant information regarding the Project; and (d) negotiation and execution of an Accommodation Agreement.

“O&M Agreement” means the Operation and Maintenance Agreement by and between Seller and Operator, which shall be substantially and in all material respects in the form of Exhibit G.

“Objectionable Title and Survey Matters” has the meaning set forth in Section 5.7.4.

“Objectionable Title and Survey Matters Required to be Cured” means any matters shown on the Title Insurance Commitment or the Survey (other than Permitted Liens) that: (a) relate to a fee mortgage that is superior to any Project Real Property Agreements that could be cured by the provision of a nondisturbance and attornment agreement acceptable to Purchaser in its reasonable discretion, or the payment of funds to have such mortgage released; (b) relate to overdue tax payments, mechanics liens, judgment liens, or other, similar liens on the fee property that could be released with the payment of funds; (c) as to each individual non-monetary Lien, could be cured with the payment of monetary consideration not to exceed twenty-five thousand dollars ($25,000); (d) could be cured with endorsements to the Title Insurance Policy that are acceptable to Purchaser in its reasonable discretion and required to address Objectionable Title and Survey Matters; (e) if not cured could materially detract from the value or materially interfere with the operation of the Project, as determined by Purchaser in its reasonable discretion; or (f) [\_\_\_\_\_\_\_\_\_\_].[[30]](#footnote-30)

“Operator” means the counterparty (other than Seller) to the O&M Agreement.

“Outside Date” has the meaning set forth in Section 7.1.5.

“Overlap Period” means any taxable period beginning on or before and ending after the Closing Date.

“Overlap Period Taxes” means any Taxes (other than Seller Income Taxes) imposed on or with respect to the Project Assets or Seller for an Overlap Period.

“PacifiCorp Transmission” means PacifiCorp, an Oregon corporation, including the Grid Operations business unit, acting in its capacity of providing generator interconnection and transmission services under the terms of its Open Access Transmission Tariff on file with the FERC, as it may be amended from time to time, or its successors or assigns.

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

“Payment” and “Payments” have the meanings set forth in Section 2.2.1.

“Permits” means registrations, permits, licenses, authorizations, consents, approvals, grants, franchises, variances, certificates of authority, letter rulings, or similar rights and privileges granted by or obtained from any Governmental Authority, as well as applications for any of the foregoing.

“Permitted Encumbrances” has the meaning set forth in Section 5.7.4.

“Permitted Liens” means: (a) those Liens set forth in Schedule 1.1(b); (b) zoning, entitlement, conservation restriction and other land use and environmental regulations by any Governmental Authority; (c) Liens for Taxes and other governmental charges and assessments which are not yet due and payable or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been made; (d) mechanics’, carriers’, workers’, repairers’ and other similar Liens arising or incurred in the ordinary course of business which are not yet due and payable; (e) Liens expressly granted under, or created by, existing or pursuant to, the terms and conditions of the Project Contracts; (f) Liens created pursuant to, or as a result of the existence of, this Agreement or any Ancillary Agreement; (g) any Liens approved or consented to in writing by Purchaser; (h) Liens created pursuant to the Purchaser Security Agreements; and (i) Liens relating to any Excluded Asset or Excluded Liability.

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

“Placed In Service” means “placed in service” for purposes of Sections 45, 48, or 168 of the Code.

“Planned Project Size” means [\_\_\_\_\_] MW or such other amount as the Parties may mutually agree in writing in their sole discretion.

“Point of Interconnection” means the point where the Project interconnects to the transmission system of Transmission Provider.

“Pledge Agreement” means the pledge agreement by and between Seller and Purchaser, in the form attached hereto as Exhibit L.

“Post-Closing Tax Period” means any taxable period ending after the Closing Date, or with respect to any Overlap Period, the portion of such Overlap Period that begins the day after the Closing Date.

“Pre-Closing Books and Records” has the meaning set forth in Section 2.6.2(a).

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date, or with respect to any Overlap Period, the portion of such Overlap Period ending on the Closing Date.

“Pre-Closing Taxes” has the meaning set forth in Section 9.3.

“Preliminary Title Report” has the meaning set forth in Section 5.7.1.

“Project” has the meaning set forth in the Recitals to this Agreement.

“Project Assets” means all assets, properties, rights and interests of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site), and any goodwill related thereto, owned or leased by, or licensed to, Seller as of the Closing Date, in each case, which relate to or are used or held for use in connection with the development, construction, operation, maintenance, repair, ownership or use of the Project (other than the Excluded Assets), including,:

(a) the Books and Records;

(b) the Project Site;

(c) the Project Contracts;

(d) the Project Real Property Agreements;

(e) the Project Fixtures and Equipment;

(f) the Project Improvements;

(g) the Project Intellectual Property;

(h) the Project Permits (other than the Purchaser Permits);

(i) the Reports; and

(j) the Resource Data.

“Project Contracts” means all Contracts to which Seller or any of its Affiliates is a party with respect to the Project or the Project Assets (other than the Project Real Property Agreements), including the Interconnection Agreement, the Construction Agreements and the Construction Completion Agreement, all of which are listed on Schedule 1.1(c).

“Project Fixtures and Equipment” means all fixtures, equipment, construction in progress and other tangible personal property related to, used or held for use by Seller or any of its Affiliates for or in connection with the development, construction, operation, maintenance, repair, ownership or use of the Project, in each case, whether located at or deliverable to the Project Site, other than the Excluded Assets, all of which are listed on Schedule 1.1(d).

“Project Improvements” means all buildings, structures, fixtures, improvements and the point of interconnection with the Transmission Provider located at or on the Project Site that will comprise the Project and Project Assets, all of which are listed on Schedule 1.1(e).

“Project Intellectual Property” means all Intellectual Property and licenses to use such Intellectual Property owned or held by Seller or any of its Affiliates and used or held for use with respect to the Project or the Project Assets, all of which are listed on Schedule 1.1(f).

“Project Permits” means all Permits required by applicable Law and Good Operating Practices for the development, design, engineering, supply, construction, installation, testing, commissioning, operation, maintenance, repair, ownership and use of the Project at the Project Site (except for immaterial Permits or ministerial Permits of a type that are routinely granted on application), all of which are listed on Part A of Schedule 1.1(g).

“Project Real Property Agreements” means all Contracts, instruments, deeds for fee, leasehold or subleasehold, Easements and any other interest in real property, including any Contracts for real property rights granted by the State of [State] or any other Governmental Authority (including any option to acquire the same), and all amendments, assignments, and modifications thereto and all schedules and exhibits attached thereto, which comprise the Project Site, to which Seller is a party or by which Seller or any of the Project Assets are bound, and that grant, convey, assign or otherwise affect real property interests relating to the Project Site, all of which are listed on Schedule 1.1(h).

“Project Site” means the real property located in [County], [State], including the Easements, upon which the Project, its interconnection and transmission facilities and its access rights will be located, as further described on Schedule 1.1(i).

“PTC” means the renewable energy production tax credit pursuant to Section 45 of the Code.

“UPSC” means the Utah Public Service Commission or any successor.

“Purchase Price” means the aggregate amount of all Payments paid to Seller pursuant to this Agreement, subject to adjustment, if any, as provided for in this Agreement.

“Purchase Price Allocation Schedule” has the meaning set forth in Section 2.3.

“Purchaser” has the meaning set forth in the Preamble of this Agreement.

“Purchaser Indemnified Party” has the meaning set forth in Section 8.1.

“Purchaser Material Adverse Effect” means a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or any Ancillary Agreement to which it is a party or to complete the transactions contemplated hereby or thereby.

“Purchaser Permits” means the Project Permits required by applicable Law and Good Operating Practices to be obtained by Purchaser in connection with the development, design, engineering, supply, construction, installation, testing, commissioning, operation, maintenance, repair, ownership and use of the Project at the Project Site (except for immaterial Permits or ministerial Permits of a type that are routinely granted on application), all of which are listed on Part D of Schedule 1.1(g).

“Purchaser Security Agreements means, collectively, the Security Agreement, the Deed of Trust and the Pledge Agreement.

“Purchaser’s Consents” has the meaning set forth in Section 4.4.2.

“Purchaser’s Disclosure Schedule” means the Schedules prepared by Purchaser and delivered to Seller in conjunction with the execution of this Agreement.

“Purchaser’s Knowledge” means the actual knowledge, after due inquiry, of the Persons listed on Schedule 1.1(j).

“Related Person” means with respect to each Party, its Affiliates, and the employees, officers and directors of such Party and its Affiliates.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, seeping, or disposing to the environment (including the abandonment or discarding of barrels, containers, and receptacles containing Hazardous Materials).

“Remediation” means actions required under Environmental Laws or by a Governmental Authority, or a claim by a third party against a Purchaser Indemnified Party, in each case to address an Environmental Condition, including any monitoring, investigation, assessment, characterization, treatment, cleanup, containment, removal, mitigation, response or restoration work.

“Renewable Energy Incentives” means: (a) federal, state or local tax credits or other tax benefits (such as accelerated depreciation, the ITC, or the PTC) associated with the construction or ownership of, or the sale or production of electricity from, the Project, including any investment tax credits, production tax credits or governmental payments made in lieu of such credits; (b) any federal, state or local grants, rebates, subsidized financing or any other subsidy relating to the property of the Project or the output thereof; and (c) any other form of incentive that is not an Environmental Attribute that is available with respect to the Project.

“Reports” means all final material third party reports, studies, analyses and tests (and all amendments and supplements thereto) prepared for, or commissioned by, and delivered to, Seller or any of its Affiliates that relate to the Project, including the Project Assets, or the Project Site, including Phase I environmental assessments, environmental impact studies, geotechnical studies, transportation studies, cultural resources studies, transmission or interconnection studies, including interconnection system impact studies, wildlife studies, studies or analysis of or reports on the environmental condition of the Project Site or compliance by the Project or the Project Site with Environmental Laws, Federal Aviation Administration analyses, state department of transportation analyses, zoning studies, visual impact studies, and wetlands studies, in each case, together with all necessary reliance letters and in form and substance reasonably acceptable to Purchaser, all of which are described in Schedule 1.1(k).

“Reports Cut-Off Date” has the meaning set forth in Section 7.1.6.

“Representatives” means, as to any Person, its officers, directors, employees, agents, partners, members, stockholders, counsel, accountants, investment bankers, engineers, consultants and other representatives or advisors, provided that in no event shall Seller or any Affiliate of Seller be a Representative of Purchaser for purposes of this Agreement.

“Resource Data” means, all [solar irradiance][[31]](#footnote-31) [wind][[32]](#footnote-32) and meteorological data (including wind speed and other relevant wind data or characteristics with respect to the Project Site) with respect to the Project or related to the Project Site from the meteorological station located at the Project Site and generated prior to the Execution Date, all of which data is listed in or attached to Schedule 1.1(l).

“Retained Information” has the meaning set forth in Section 2.6.2(b).

“Schedule” or “Schedules” means one or more of the disclosure schedules attached hereto.

“Security Agreement” means the security agreement by and between Seller and Purchaser, in the form attached hereto as Exhibit J.

“Seller” has the meaning set forth in the Preamble to this Agreement.

“Seller Income Taxes” means any franchise or similar Taxes imposed on, or Taxes imposed on, or measured by reference to, the net income or net worth of, Seller or any Affiliate of Seller.

“Seller Indemnified Party” has the meaning set forth in Section 8.2.

“Seller Material Adverse Effect” means any change or changes that is, or in the aggregate are, materially adverse to: (a) the business, assets, operations, property or condition of Seller, Seller’s Parent Guarantor or Pledgor; (b) the business, assets, operations, construction, ownership, use or condition of the Project or the Project Assets; (c) the validity or enforceability of this Agreement or the Ancillary Agreements or Purchaser Security Agreements or the transactions contemplated hereby or thereby; or (d) the ability of Seller, Seller’s Parent Guarantor or Pledgor to perform its obligations under this Agreement or the Ancillary Agreements or Purchaser Security Agreements to which it is a party or to complete the transactions contemplated hereby or thereby; provided, however, that the term “Seller Material Adverse Effect” shall not include: (i) changes or developments in the international, national or regional electric industry in general, including effects on such industry resulting from any new regulatory and political conditions or developments; (ii) changes or developments in general national or regional economic or financial conditions; (iii) changes or developments in financial and securities markets in the United States; or (iv) changes or developments in Law; provided, further, that the foregoing shall not apply with respect to clauses (i) through (iv) if the impact of such event, individually or in the aggregate, is materially disproportionately adverse to the Project, the Project Assets, Seller or Seller’s Parent Guarantor as compared with other projects or participants in the relevant businesses or geographic area.

“Seller’s Consents” has the meaning set forth in Section 3.5.2.

“Seller’s Disclosure Schedule” means the Schedules prepared by Seller and delivered to Purchaser in conjunction with the execution of this Agreement.

“Seller’s Knowledge” means the actual knowledge, after due inquiry, of the Persons listed on Schedule 1.1(m).

“Seller’s Parent Guarantor” means [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].[[33]](#footnote-33)

“Seller’s Parent Guaranty” means the Guaranty substantially and in all material respects in the form of Exhibit A, pursuant to which Seller’s Parent Guarantor guarantees the payment and performance of Seller’s obligations under this Agreement, including the indemnification obligations as set forth in ARTICLE VIII and ARTICLE IX, in the maximum amount of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] ($[\_\_\_\_\_\_\_\_\_\_\_\_]), representing one hundred percent (100%) of the Purchase Price.

“Seller’s Title/Survey Objection Response” has the meaning set forth in Section 5.7.4.

[“Service and Maintenance Agreement” means the Service and Maintenance Agreement by and between Seller and Turbine Supplier, which shall be substantially and in all material respects in the form of Exhibit I.][[34]](#footnote-34)

“Substantial Completion” has the meaning set forth in the EPC Agreement.

“Survey” has the meaning set forth in Section 5.7.2.

“Surveyor” has the meaning set forth in Section 5.7.2.

“Tax” or “Taxes” means any and all taxes, including any interest, penalties or other additions to tax that may become payable in respect thereof, imposed by any foreign, federal, state or local government or any agency or political subdivision of any such government, which taxes shall include all income taxes, profits taxes, taxes on gains, alternative minimum taxes, estimated taxes, payroll and employee withholding taxes, unemployment insurance taxes, social security taxes, welfare taxes, disability taxes, severance taxes, license charges, taxes on stock, sales and use taxes, ad valorem taxes, value added taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real or personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers’ compensation taxes and other taxes, fees, duties, levies, customs, tariffs, imposts, assessments, obligations and charges of the same or of a similar nature to any of the foregoing.

“Tax Returns” means any return, report, rendition, information return, claim for refund or other document (including any related or supporting information) supplied to or required to be supplied to any Taxing Authority with respect to Taxes, including any attachments, amendments and supplements thereto.

“Taxing Authority” means, with respect to any Tax, the Governmental Authority or political subdivision thereof that imposes such Tax and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

“Title and Survey Objection Notice” has the meaning set forth in Section 5.7.

“Title Company” means [ ].[[35]](#footnote-35)

“Title Insurance Commitment” has the meaning set forth in Section 5.7.3.

“Title Insurance Policy” has the meaning set forth in Section 5.7.3.

“Transfer Taxes” has the meaning set forth in Section 9.2.

“Transmission Provider” means PacifiCorp Transmission.

[“Turbine Supplier” means the counterparty (other than Seller) to the Turbine Supply Agreement, which shall be a turbine supply manufacturer listed on Schedule 1.1(n) or otherwise a first-tier turbine supply manufacturer acceptable to Purchaser in its sole discretion.

“Turbine Supply Agreement” means that certain Turbine Supply Agreement by and between Seller and Turbine Supplier, which shall be substantially and in all material respects in the form of Exhibit H.][[36]](#footnote-36)

“UAC” means the Utah Administrative Code, as amended through the date hereof.

“UTC” means the Utah Code, as amended through the date hereof.

* 1. Rules as to Usage

. Except as otherwise expressly provided herein, the following rules shall apply to the usage of terms in this Agreement:

* + - 1. The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined. If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb).
			2. “Include,” “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.
			3. “Writing,” “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.
			4. Any Law defined or referred to herein means such Law as from time to time amended, modified or supplemented, including by succession of comparable successor Law and any rules and regulations promulgated thereunder.
			5. References to a Person are also to its permitted successors and assigns, and in the case of any Governmental Authority, to any Person(s) succeeding to its functions and capacities.
			6. “Hereof,” “herein,” “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or exhibit or schedule or other attachment thereto. References in an instrument to “Article,” “Section” or another subdivision or to an exhibit, schedule or other attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an exhibit or schedule or other attachment to such agreement or instrument.
			7. Pronouns, whenever used in any agreement or instrument that is governed by this Agreement and of whatever gender, shall include all Persons. References to any gender include, unless the context otherwise requires, references to all genders.
			8. The word “or” will be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, “or” will be interpreted to mean “and/or” rather than “either/or”). When expressing an obligation of a Person, the words “shall” and “will” have equal force and effect.
			9. Whenever the consent or approval of any Party is required pursuant to this Agreement, unless expressly stated that such consent or approval is to be given in the sole discretion of such Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.
			10. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Da­­y, then such action may be validly taken on or by the next day that is a Business Day.
			11. Relative to the determination of any period of time, “from” means “including and after,” “to” means “to but excluding”, and “through” means “through and including”.
			12. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.
	1. Schedules and Exhibits

. This Agreement consists of the Articles contained herein and the Schedules and Exhibits attached hereto, all of which comprise part of one and the same agreement with equal force and effect.

1.4 Interpretation with FERC Orders. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its companion orders, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Transmission Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the Interconnection Agreement with the Transmission Provider.

* + - 1. The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms hereof are not binding upon the Transmission Provider.
			2. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation hereunder. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider.
			3. Seller expressly recognizes that, for purposes hereof, the Transmission Provider shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Interconnection Agreement is entered into with Transmission Provider or an Affiliate thereof. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and (except as specifically provided herein) is not liable for any breach of agreement or duty or failure of performance by Transmission Provider.
1. PURCHASE AND SALE; PURCHASE PRICE; CLOSING
	1. Purchase and Sale; Project Contracts; Excluded Assets; Excluded Liabilities; Assumed Liabilities.
		1. Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, transfer, convey, assign and deliver to Purchaser, free and clear of all Liens (other than Permitted Liens and Permitted Encumbrances), and Purchaser will purchase, acquire and pay for, all of Seller’s right, title and interest in and to the Project Assets, but not the Excluded Assets.
		2. Assignment and Assumption of Project Contracts. On the terms and subject to the conditions set forth in this Agreement, simultaneously with the Closing, Seller shall assign to Purchaser, and Purchaser shall accept and assume from Seller: (a) all of Seller’s rights under the Project Contracts, Project Permits and Project Real Property Agreements; and (b) all of Seller’s obligations arising under the Project Contracts, Project Permits and Project Real Property Agreements, solely to the extent such obligations arise after the Closing and do not constitute Liabilities (i) arising out of any failure to perform, improper performance, warranty or other breach, default or violation by Seller or any of its Affiliates (or any Person acting on behalf of Seller or any of its Affiliates) prior to the Closing or (ii) arising or accruing on, prior to or after the Closing relating to Construction Costs. For the avoidance of doubt, with respect to indemnity obligations under the Project Contracts, Purchaser shall assume Liabilities only for events that occur after the Closing.
		3. Excluded Assets. Seller shall have no obligation to, and does not, transfer any interest or rights in the Excluded Assets, and Purchaser shall have no Liability with respect thereto. The Parties acknowledge and agree that Seller shall have the right on or prior to the Closing Date to retain or to transfer and assign to one or more of its Affiliates its interests in the Excluded Assets.
		4. Excluded Liabilities; Assumed Liabilities.
			1. Excluded Liabilities. Except for the Assumed Liabilities, Purchaser shall not assume and shall not be responsible to pay, perform, satisfy or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, relating to the construction, ownership, operation or maintenance of the Project, the Project Assets or the Project Site prior to the Closing (collectively, the “Excluded Liabilities”). On and after the Closing, Seller shall, and shall cause each of its Affiliates to, retain, pay, perform, satisfy and discharge all Excluded Liabilities for which it or they are respectively obligated, including the following:
				1. all Liabilities arising from any violation of applicable Environmental Law (A) by Seller or any of its Affiliates or (B) any other Person acting on behalf of Seller or any of its Affiliates, in each case, in connection with the construction, ownership, operation or maintenance of the Project or the Project Site prior to the Closing;
				2. all Liabilities relating to, resulting from or arising out of any Environmental Condition on, under, or near the Project Site to the extent existing prior to the Closing, including Liabilities related to Remediation, natural resource damages, bodily injury or property damage;
				3. all Liabilities relating to, resulting from or arising out of the off-site transportation, disposal, recycling or storage, or arrangement for same, of Hazardous Materials, from the Project or the Project Site prior to the Closing, including Liabilities related to Remediation, natural resource damages, bodily injury or property damage;
				4. all Liabilities relating to, resulting from or arising out of: (A) any employee benefit plan, employment agreement or other arrangement of Seller, any Affiliate of Seller or any of their respective ERISA Affiliates providing any type of compensation to any former or current employee of Seller, any Affiliate of Seller or any of their respective ERISA Affiliates, including any obligation or Liability for providing continuation coverage under and complying with Section 4980B of the Code, Sections 601 through 608 of ERISA, and any applicable state Law of similar intent with respect to any individual who either prior to, on or after the Closing Date was covered under any group health plan contributed to or maintained by Seller, any Affiliate of Seller, or any of their respective ERISA Affiliates, or who will otherwise be an “M&A Qualified Beneficiary” (as such phrase is defined in Treasury Regulation Section 54.4980B-9, Q&A-4) in connection with the transactions contemplated by this Agreement; and (B) any current or former employee, independent contractor or consultant of Seller, any Affiliate of Seller or any of their respective ERISA Affiliates;
				5. all Liabilities of Seller and any of its Affiliates relating to, resulting from or arising out of the Project Contracts or Project Real Property Agreements relating to the period prior to Closing and not expressly assumed by Purchaser pursuant to Section 2.1.2, and all Liabilities relating to, resulting from or arising out of Contracts relating to the Project, the Project Assets or the Project Site which are not Project Contracts or Project Real Property Agreements;
				6. all Liabilities of Seller and any of its Affiliates relating to, resulting from or arising out of the Project Permits (other than Purchaser Permits) relating to the period prior to Closing and not expressly assumed by Purchaser pursuant to Section 2.1.2, and all Liabilities relating to, resulting from or arising out of Permits relating to the Project, the Project Assets or the Project Site which are not Project Permits;
				7. all Liabilities arising or accruing on, prior to or after the Closing relating to Construction Costs;
				8. all Liabilities to any Person for personal injury, property damage or tort relating to, resulting from or arising out of the siting, design, development, interconnection, construction, start-up, testing, commissioning, ownership, use, operation or maintenance of the Project or the Project Assets on or prior to the Closing, whether or not such claim was made or asserted on or prior to the Closing;
				9. all Liabilities relating to, resulting from or arising out of litigation and threatened litigation in connection with the Project or the Project Assets (other than in connection with this Agreement) arising or accruing on or prior to the Closing, regardless of when filed;
				10. all Pre-Closing Taxes and Seller Income Taxes with respect to the transfer of the Project Assets pursuant to this Agreement; and
				11. all Liabilities in any way relating to, resulting from or arising out of any Excluded Assets.
			2. Assumed Liabilities. From and after the Closing, Purchaser shall assume, and Purchaser hereby agrees to pay, satisfy and discharge when due, the following Liabilities of Seller (the “Assumed Liabilities”), and no other Liabilities:
				1. all Liabilities under the Project Contracts expressly assumed by Purchaser, pursuant to, and subject to the conditions set forth in, Section 2.1.2; and
				2. other than Liabilities arising or accruing on, prior to or after the Closing relating to Construction Costs, all Liabilities arising from the ownership, operation, maintenance or use of the Project or the Project Assets by Purchaser following the Closing.
	2. Purchase Price

.

* + 1. Amount. In consideration of the purchase by Purchaser and sale by Seller of the Project Assets and the other matters set forth herein (including all of Seller’s obligations in connection with consummation of the transactions contemplated hereby and Purchaser’s assumption of the Assumed Liabilities), Purchaser shall pay to Seller the amounts (each, a “Payment” and, collectively, the “Payments”) at the times and subject to the conditions and requirements set forth in Schedule 2.2.1. In no event shall Purchaser be obligated to pay Seller any Payment unless and until the applicable conditions and requirements in Schedule 2.2.1 are satisfied.
		2. Method of Payment of Purchase Price. Payment of the Purchase Price shall be made in United States Dollars, by wire transfer of immediately available federal funds to an account located in the United States as Seller may specify by notice. Without limiting the forgoing, Purchaser shall be entitled to deduct and withhold from any cash amounts payable pursuant to this Agreement such amounts as Purchaser may be required to deduct and withhold with respect to the making of such payment under United States federal, state or local or foreign Tax laws. To the extent that such amounts are so withheld and paid over to the appropriate Taxing Authority by Purchaser, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.
		3. Documentation. Seller agrees to provide Purchaser with a receipt, confirmation or other appropriate documentation reasonably requested by Purchaser from time to time in order to evidence Payments made pursuant to this Agreement.
	1. Allocation of Purchase Price

. Not later than forty-five (45) days after the Closing, Purchaser shall provide Seller with an allocation of the Purchase Price, plus any liabilities deemed assumed for U.S. federal income Tax purposes, among the Project Assets as of the Closing Date using the allocation method provided by Section 1060 of the Code and the Treasury regulations thereunder (the “Purchase Price Allocation Schedule”). Within thirty (30) days after its receipt of Purchaser’s proposed Purchase Price Allocation Schedule, Seller shall propose to Purchaser any changes thereto, or otherwise shall be deemed to have agreed with Purchaser’s proposed Purchase Price Allocation Schedule. If Seller proposes changes to Purchaser’s proposed Purchase Price Allocation Schedule within the thirty (30) day period described above, the Parties shall cooperate in good faith to mutually agree upon a revised Purchase Price Allocation Schedule as soon as practicable and in any event within fifteen (15) days of receipt of Seller’s proposed changes. If, after such fifteen (15) day period, the Parties are unable to agree on a revised Purchase Price Allocation Schedule, the Parties shall refer such dispute to an Independent Accounting Firm, which Independent Accounting Firm shall make a final and binding determination as to all matters in dispute with respect to the Purchase Price Allocation Schedule (and only such matters) on a timely basis and shall promptly notify the Parties in writing of its resolution. The Independent Accounting Firm shall not have the power to modify or amend any term or provision of this Agreement. Purchaser, on the one hand, and Seller, on the other hand, shall bear and pay one-half of the fees and other costs for services rendered by the Independent Accounting Firm pursuant to this Section 2.3. The Parties agree that they will not take nor will they permit any Affiliate to take, for Tax purposes, any position inconsistent with such Purchase Price Allocation Schedule unless otherwise required pursuant to applicable Law. If any adjustment is required to be made to the Purchase Price Allocation Schedule as a result of the payment of any additional Purchase Price or otherwise, this Section 2.3 shall govern the rights and obligations of the Parties with respect to such revised Purchase Price Allocation Schedule. Each Party shall notify the other Party, within twenty (20) days after notice or commencement of an examination, audit or other proceeding regarding the allocation determined under this Section 2.3.

* 1. The Closing

. The closing of the transactions contemplated herein (the “Closing”) will take place at the offices of PacifiCorp, 1407 W. North Temple, Suite 310, Salt Lake City, Utah, at 10:00 a.m. Mountain time on the date as soon as practicable (but in no event longer than three (3) Business Days, subject to an additional ten (10) day extension at the election of Purchaser in the event of a Disclosure Schedule Update pursuant to Section 5.11.2 which occurs less than ten (10) days prior to the Closing Date, and further subject to the provisions of Sections 5.11.2, 7.1.3 and 7.2), after the conditions to the Closing set forth in Section 6.1 and Section 6.2 have been satisfied or waived by the applicable Party, or at such other place, time or date as Purchaser and Seller mutually agree (the “Closing Date”), and shall be effective as of 12:01 a.m. Pacific time on the Closing Date.

* 1. Closing Deliveries

.

* + 1. Purchaser’s Closing Deliveries. At the Closing, Purchaser will pay to Seller the Closing Payment in accordance with Section 2.2 and Schedule 2.2.1, and will execute and deliver or pay (as applicable) to Seller the following items:
			1. a counterpart signature page to the Bill of Sale in substantially and all material respects in the form attached hereto as Exhibit B (the “Bill of Sale”), executed by an authorized representative of Purchaser;
			2. counterpart signature pages to the Assignment and Assumption Agreements in substantially and all material respects in the forms attached hereto as Exhibit B (collectively, the “Assignment and Assumption Agreements”), executed by an authorized representative of Purchaser;
			3. a counterpart signature page to the Construction Completion Management Agreement, executed by an authorized representative of Purchaser;
			4. [any declaration of value forms for property taxation purposes required by Law, executed by an authorized representative of Purchaser, with respect to the Project Site][[37]](#footnote-37);
			5. a certificate, dated as of the Closing Date, executed by an authorized officer of Purchaser, certifying that attached thereto is: (i) a true, accurate and complete copy of a Certificate of Good Standing with respect to Purchaser, issued by the Secretary of State of the State of Oregon as of a recent date; (ii) a true, accurate and complete copy of the resolutions of the board of directors of Purchaser, authorizing the execution, delivery and performance by Purchaser of this Agreement and all of the other agreements and instruments, including the Ancillary Agreements to which it is a party, in each case, to be executed and delivered by Purchaser in connection with this Agreement; and (iii) the name, title and signature of each of the authorized representatives of Purchaser authorized to execute and deliver this Agreement and the other agreements and instruments contemplated by this Agreement, including the Ancillary Agreements to which it is a party;
			6. a certificate, dated as of the Closing Date, executed by an authorized officer of Purchaser, certifying as to the matters set forth in Section 6.2.1 and Section 6.2.2; and
			7. such other documents and instruments as may be reasonably requested by Seller to complete the transactions contemplated by this Agreement.
		2. Seller’s Closing Deliveries. At the Closing, Seller will execute and deliver, or will cause to be executed and delivered (as applicable), to Purchaser the following items:
			1. a counterpart signature page to the Bill of Sale, executed by an authorized representative of Seller;
			2. counterpart signature pages to the Assignment and Assumption Agreements, executed by an authorized representative of Seller;
			3. a counterpart signature page to the Construction Completion Agreement, executed by an authorized representative of Seller;
			4. fully-executed copies of the Construction Agreements, executed by authorized representatives of Seller and the applicable counterparties thereto;
			5. [the Bargain and Sale Deed, executed by an authorized representative of Seller][[38]](#footnote-38);
			6. an Owner’s Affidavit and related documentation, with respect to the Project Site, executed by an authorized representative of Seller, in form and substance satisfactory to the Title Company;
			7. [any declaration of value forms for property taxation purposes required by Law , executed by an authorized representative of Seller, with respect to the Project Site];[[39]](#footnote-39)
			8. a certification of non-foreign status, in the form and manner which complies with the requirements of Section 1445(b)(2) of the Code and Treasury Regulation Section 1.1445-2(b)(2) and in form and substance reasonably satisfactory to Purchaser, with respect to Seller (or its direct or indirect regarded owner, as applicable);
			9. a certificate, dated as of the Closing Date, executed by an authorized officer of Seller, certifying that attached thereto is: (i) a true, correct and complete copy of a Certificate of Good Standing with respect to Seller, issued by the Secretary of State of the State of [\_\_\_\_\_\_\_] as of a recent date; (ii) a true, correct and complete copy of the resolutions of Seller, authorizing the execution, delivery and performance by Seller of this Agreement and all of the other agreements and instruments, including the Ancillary Agreements to which it is a party, in each case, to be executed and delivered by Seller in connection with this Agreement; and (iii) the name, title and signature of each of the authorized representatives of Seller authorized to execute and deliver this Agreement and the other agreements and instruments contemplated by this Agreement;
			10. a certificate, dated as of the Closing Date, executed by an authorized officer of Seller, certifying as to the matters set forth in Section 6.1.1 and Section 6.1.2;
			11. a current and valid (1) geotechnical study with respect to each Project Site, (2) [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] and (3) [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], in each case, in form and substance reasonably acceptable to Purchaser[[40]](#footnote-40); and
			12. such other documents and instruments as may be reasonably requested by Purchaser to complete the transactions contemplated by this Agreement.
	1. Further Assurances; Post-Closing Cooperation

.

* + 1. Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at any Party’s request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such Party may reasonably deem necessary or desirable in order more effectively: (a) to transfer, convey and assign to Purchaser, and to confirm Purchaser’s title to, the Project Assets; (b) to effectuate the assumption by Purchaser of the Project Contracts, Project Permits (other than Purchaser Permits), Project Intellectual Property, and the Assumed Liabilities; and (c) otherwise to complete the transactions contemplated by this Agreement.
		2. Pre-Closing Books and Records.
			1. Following Closing, each Party and its Affiliates will afford each other Party and their respective Representatives, during normal business hours, reasonable access to the Books and Records with respect to periods prior to Closing (the “Pre-Closing Books and Records”) and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting Party in connection with: (i) the preparation of Tax Returns; (ii) compliance with the requirements of any Governmental Authority; (iii) any Excluded Liabilities or Assumed Liabilities; or (iv) any rights and obligations arising under ARTICLE VIII, ARTICLE IX or ARTICLE XI. Each Party shall maintain Pre-Closing Books and Records reasonably expected to be required in connection with the matters described in items (i) through (iv) of the preceding sentence in accordance with the ordinary course document retention policies of such Party; provided, however, that nothing in this Agreement shall be deemed to obligate a Party to maintain the Pre-Closing Books and Records for longer than seven (7) years after Closing, and, (x) in the case of Purchaser, to provide access to Pre-Closing Books and Records other than those of Purchaser, and (y) in the case of Seller, to provide access to Pre-Closing Books and Records other than those of Seller; and provided, further, that, in the case of any dispute between the Parties, access to Books and Records shall instead be governed by the applicable Laws of discovery.
			2. Purchaser acknowledges and consents to the retention by Seller of information made available to Purchaser relating to the Project Assets (the “Retained Information”). From and after the Closing Date for a period of two (2) years, Seller shall, and shall cause its Representatives to, treat the Retained Information as strictly confidential (except to extent: (a) the Retained Information is or was generally available to the public; (b) the Retained Information is or was available to Seller or its Representatives on a non-confidential basis from other sources not actually known by Seller to be under a duty of confidentiality to Purchaser; or (c) compelled to disclose by judicial or administrative process or by other requirements of applicable Law, any stock exchange or any other self-regulatory organization or as reasonably required by Seller in connection with the matters described in clauses (i) through (iv) of Section 2.6.2(a)).
		3. Delivery of Books and Records. No later than the Closing Date (or in the case of Books and Records not immediately required for the ownership, use, operation and maintenance of the Project that cannot be reasonably and practicably delivered at the Closing, as soon as reasonably practicable thereafter, but no later than forty-five (45) days after the Closing Date), Seller shall deliver any Books and Records (to the extent providing such to Purchaser does not violate any applicable Law) that are not located at the Project Site to Purchaser at Purchaser’s offices in Salt Lake City, Utah, the Project Site or another location as designated by Purchaser in or near Salt Lake City, Utah.
1.

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser that, except as set forth in Seller’s Disclosure Schedule, all of the statements contained in this ARTICLE III are true and correct as of the Execution Date, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date). Each exception and other response to this Agreement set forth in Seller’s Disclosure Schedule is identified by reference to, or has been grouped under a heading referring to, a specific individual section of this Agreement, and, except as otherwise specifically stated with respect to such exception, relates only to such section and to other sections to the extent that the application of such exception or other response to such other sections is reasonably apparent on its face without further investigation.

* 1. Existence

. Seller is duly formed, validly existing and in good standing, as applicable, under the Laws of the jurisdiction of its formation. Seller has all requisite entity power and authority to own, operate and lease its properties and assets and to carry on its business as now being conducted. Seller is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business transacted by it makes qualification necessary, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to have a Seller Material Adverse Effect.

* 1. Authority

. Seller has all requisite entity power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is (or will be) a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to complete the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and the Ancillary Agreements to which it is (or will be) a party in connection with the transactions contemplated hereby, and the performance by Seller of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary entity action.

* 1. Limited Purpose Entity

. Since its formation, Seller has engaged solely in the business of developing, constructing, owning and operating the Project, including the Project Assets.

* 1. Binding Agreement

. This Agreement and the Ancillary Agreements to which Seller is (or will be) a party have been (or will be when delivered) duly and validly executed and delivered by Seller and, assuming due and valid authorization, execution and delivery thereof by Purchaser and each other party thereto, this Agreement and the Ancillary Agreements to which it is (or will be) a party are (or will be when delivered) valid and binding obligations of Seller enforceable against Seller in accordance with their terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the enforcement of creditors’ rights generally and to general principles of equity).

* 1. No Conflicts

. The execution and delivery by Seller of this Agreement and the Ancillary Agreements to which it is (or will be) a party does not, and the performance by Seller of its obligations under this Agreement and the Ancillary Agreements to which it is (or will be) a party and the completion of the transactions contemplated hereby and thereby, shall not:

* + 1. conflict with or result in a violation or breach of any of the terms, conditions or provisions of Seller’s organizational documents;
		2. assuming all of the consents and approvals set forth in Section 3.5 of Seller’s Disclosure Schedule (the “Seller’s Consents”) have been obtained or given, result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any Project Contract or Contract (with or without notice or lapse of time or both) with respect to the Project Assets to which Seller or any of its Affiliates is a party or by which Seller, any of its Affiliates or any of the Project Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained in writing (true, correct and complete copies of which have been furnished to Purchaser);
		3. assuming all of the Seller’s Consents have been obtained or given, conflict with or result in a violation or breach of any term or provision of any Law applicable to Seller, the Project, the Project Site or the Project Assets; or
		4. assuming all of the Seller’s Consents have been obtained or given, result in the imposition or creation of any Lien (other than a Permitted Lien or a Permitted Encumbrance) upon any of the Project Assets, other than in favor of Purchaser.
	1. Governmental Approvals and Filings

. Except as set forth in Section 3.6 of Seller’s Disclosure Schedule, no consent or approval of, filing with or notice to, any Governmental Authority by Seller is required in connection with the execution, delivery and performance by Seller of this Agreement or any of the Ancillary Agreements to which it is (or will be) a party or the completion of the transactions contemplated hereby or thereby.

* 1. Legal Proceedings

. There are no Actions (a) outstanding or pending to which Seller or any of its Affiliates is a party or (b) to Seller’s Knowledge, threatened against Seller or any of its Affiliates or any of its or their respective assets and properties, including the Project or Project Assets, in each case, which seek or would be reasonably expected to (i) result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement or any of the Ancillary Agreements, or (ii) individually or in the aggregate, have a Seller Material Adverse Effect.

* 1. Compliance with Laws

. Seller is not in violation of or in default under any Law applicable to it (excluding any Environmental Laws, which are addressed in Section 3.18, and Tax Laws, which are addressed in Section 9.1), the Project, the Project Site or the Project Assets, in each case, in any material respect. Seller has not received written notification alleging that it is in violation of any Law (excluding any Environmental Laws, which are addressed in Section 3.18, and Tax Laws, which are addressed in Section 9.1), applicable to the Project, the Project Site or the Project Assets, in each case, in any material respect.

* 1. Title to Project Assets

. As of the Execution Date, Seller has good and marketable title to the Project Assets constituting personal property (as opposed to real property), free and clear of all Liens, except for Permitted Liens. At the Closing, Purchaser will acquire good and marketable title to such Project Assets constituting personal property, free and clear of all Liens, except for Permitted Liens.

* 1. Real Property.
		1. As of the Execution Date, Seller holds good, marketable and fee simple title to, or good and valid leasehold or Easement interests in, the Project Site pursuant to the Project Real Property Agreements, free and clear of all Liens other than Permitted Liens. At the Closing, Purchaser will acquire good, marketable and fee simple title to, or good and valid leasehold or Easement interests in, the Project Site pursuant to the Project Real Property Agreements, free and clear of all Liens other than Permitted Liens, and subject to Permitted Encumbrances. As of the Closing Date, the Project Real Property Agreements shall constitute all of the real property rights necessary for the development, construction, commissioning, ownership, operation, use or maintenance of the Project in accordance with Good Utility Practice at the Project Site.
		2. With respect to Seller and, to Seller’s Knowledge, each other party thereto, each Project Real Property Agreement (a) was duly executed and delivered by a person with the power and authority to do so, and (b) is legal, valid, binding and in full force and effect, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors’ rights generally and equitable principles.
		3. (a) Seller is not in breach or default in any material respect under any Project Real Property Agreement and, to Seller’s Knowledge, no other party to a Project Real Property Agreement is in breach or default in any material respect thereunder; (b) no event has occurred which, with notice or lapse of time, or both, would constitute a breach or default by Seller or any Affiliate of Seller, to Seller’s Knowledge, any other party to a Project Real Property Agreement, or, to Seller’s Knowledge, would permit termination, modification or acceleration, thereof; and (c) neither Seller nor any Affiliate of Seller has and, to Seller’s Knowledge, no other party to a Project Real Property Agreement has, repudiated any provision thereof.
		4. Neither the Project Site nor any of Seller’s interests in any Project Real Property Agreement is subject to any Lien, assignment, lease, sublease, transfer, conveyance, option, mortgage, deed of trust or other encumbrance, other than Permitted Liens and, at the Closing, Permitted Encumbrances.
		5. There are no commitments or agreements between Seller or any Affiliate of Seller, on the one hand, and any Governmental Authority, public or private utility or any other Person, on the other hand, affecting the Project, the Project Site, the Project Real Property Agreements, the Project Fixtures and Equipment, the Project Improvements, the Project Permits, or any portion thereof or interest therein.
		6. There are no Actions pending or, to Seller’s Knowledge, threatened, against or affecting the Project, the Project Site, the Project Real Property Agreements, the Project Fixtures and Equipment or the Project Improvements, or any portion thereof or interest therein, in the nature of, or in lieu of, condemnation, land use, zoning or eminent domain proceedings, or otherwise.
		7. All utility services necessary for the construction, operation, maintenance and use of the Project for its intended purpose are available at the Project Site or will be so available as and when required upon commercially reasonable terms.
		8. Schedule 1.1(h) contains a true, correct and complete list of all Project Real Property Agreements with respect to the Project. Seller has delivered to Purchaser true, correct and complete copies of (a) all Project Real Property Agreements and (b) title insurance commitments, policies, opinions, abstracts and surveys with respect to the Project Site, in each case, that are in the possession or control of Seller or any of its Affiliates.
	2. Sufficiency of Project Assets.
		1. The Project Assets constitute all of the material Contracts, Permits, Intellectual Property, rights, assets and properties necessary to develop, site, permit, design, engineer, supply, construct, install, interconnect, test, commission, own, use, operate and maintain the Project on the Project Site in accordance with applicable Law, the Project Permits and Good Operating Practices, and other than the Project Assets, there are no other Contracts, Permits, Intellectual Property, rights, assets or properties that are held by Seller, any of its Affiliates or any other Person, relating to, associated with or concerning the Project or the Project Site, that are necessary for the development, siting, permitting, design, engineering, supply, construction, installation, interconnection, testing, commissioning, ownership, use, operation, or maintenance of the Project on the Project Site in accordance with applicable Law, the Project Permits and Good Operating Practices.
		2. No Person other than Seller owns or has any interest in, or option or other right (contingent or otherwise), including a right of first refusal or a right of first offer, or has any Lien (other than Permitted Liens) on any of the Project Assets. There are no adverse claims of ownership to any of the Project Assets and neither Seller nor any of its Affiliates has received any notice that any Person has asserted a claim of ownership or right of possession or use in or to any of the Project Assets.
		3. (a) Schedule 1.1(d) contains a true, correct and complete list and description of all Project Fixtures and Equipment and (b) Schedule 1.1(e) contains a true, correct and complete list and description of all Project Improvements.
		4. All Project Fixtures and Equipment, Project Improvements and other Project Assets constituting personal property (a) are in good working order and condition, ordinary wear and tear excepted, (b) are adequate for the uses to which they are being put and (c) have been maintained in accordance with Good Operating Practices. All Project Fixtures and Equipment and Project Improvements are, and immediately before the Closing shall be, located at the Project Site.
	3. No Seller Material Adverse Effect. No Seller Material Adverse Effect exists. To Seller’s Knowledge, no event(s) have occurred or circumstance(s) exist that, individually or in the aggregate, would reasonably be expected to result in a Seller Material Adverse Effect.
	4. Contracts.
		1. Except for the Project Contracts and any Contracts with respect to which none of the Project Assets will be bound or have Liability after the Closing, there are no Contracts by which any of the Project Assets may be bound after the Closing, including Contracts of the following types:
			1. Contracts for the purchase, exchange or sale of electric power or ancillary services;
			2. Contracts for the interconnection, transmission or distribution of electric power;
			3. other than Contracts of the nature addressed by Section 3.13.1(a) and Section 3.13.1(b), Contracts for the current or future provision of goods or services requiring payments in excess of $25,000 for each individual Contract;
			4. outstanding agreements of guaranty, surety or indemnification, direct or indirect, for the benefit of the Project Assets;
			5. Contracts relating to the current or future provision of goods or services;
			6. Contracts relating to the employment at or for the Project of any employee, independent contractor or consultant, including employment or consulting Contracts, Contracts providing severance benefits and any collective bargaining agreement;
			7. outstanding futures, swap, collar, put, call, floor, cap, option or other Contracts that are intended to benefit from or reduce or eliminate the risk of fluctuations in the price of commodities, including electric power or securities;
			8. partnership, joint venture or limited liability company agreements;
			9. Contracts relating to Indebtedness; and
			10. Contracts relating to the use of Intellectual Property for the Project which are not Excluded Assets.
		2. The Project Contracts, together with the Ancillary Agreements, are all of the material Contracts that are necessary as of the Closing Date for the development, permitting, design, engineering, supply, construction, installation, testing, commissioning, use, operation and maintenance of the Project in accordance with applicable Laws, the Project Permits and Good Operating Practices.
		3. Seller has provided Purchaser with true, correct and complete copies of all Project Contracts, including all amendments, supplements, schedules and exhibits thereto. No written waiver or, to Seller’s Knowledge, oral waiver of any term or condition of any Project Contract is currently in effect. Seller has not assigned any of its interests in any of the Project Contracts, and none of Seller’s interests in any of the Project Contracts is subject to any Liens (other than Permitted Liens).
		4. Neither Seller, nor to Seller’s Knowledge, any counterparty, is in default in any material respect in the performance or observance of any term or provision of, and no event has occurred which, with the giving of notice or the lapse of time or both, would result in such a default under, any Project Contract. Each Project Contract constitutes a legal, valid and binding agreement of Seller and, to Seller’s Knowledge, of each other party thereto, enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency or other similar Laws relating to or affecting the enforcement of creditors’ rights generally and to general principles of equity).
		5. Neither Seller nor any of its Affiliates has sold or transferred, agreed or committed to sell or transfer, or granted any options or rights to purchase electric power, electric capacity, Environmental Attributes or Renewable Energy Incentives in connection with or related to the Project.
		6. Schedule 1.1(c) contains a true, correct and complete list and description of all Project Contracts.
	5. Permits.
		1. Lists of Permits.
			1. Part A of Schedule 1.1(g) sets forth a true, correct and complete list of all Project Permits;
			2. Part B of Schedule 1.1(g) sets forth a true, correct and complete list of all Project Permits obtained by or on behalf of Seller;
			3. Part C of Schedule 1.1(g) sets forth a true, correct and complete list of the Project Permits for which Seller or any of its Affiliates has applied (other than those referenced in clause (b) above); and
			4. Part D of Schedule 1.1(g) sets forth a true, correct and complete list of all Purchaser Permits.
		2. With respect to each Project Permit (other than the Purchaser Permits) that has been obtained as of the Execution Date or the Closing Date, as applicable:
			1. each such Permit is legal, valid, binding and in full force and effect;
			2. the completion of the transactions contemplated by this Agreement and the Ancillary Agreements will not affect the legality, validity, binding nature or force and effect of each such Permit being transferred to Purchaser pursuant to the applicable Assignment and Assumption Agreement, except with respect to the identity of the parties thereto as a result of such Assignment and Assumption Agreement;
			3. Seller is in compliance with the terms and conditions of each such Permit, and, to Seller’s Knowledge, no event has occurred which with the giving of notice or lapse of time, or both, would constitute non-compliance with such terms and conditions;
			4. each such Permit is properly in the name of the Project or Seller, as applicable;
			5. no Action is pending or, to Seller’s Knowledge, threatened in writing, in each case, which challenges the legality, validity or enforceability of, or threatens to revoke, suspend or modify, any such Permit;
			6. no notice of noncompliance or default has been received by Seller or any of its Affiliates in respect of any such Permit, and no information has been received by Seller or any of its Affiliates that would reasonably be expected to prevent Seller from maintaining any such Permit or from transferring to Purchaser on the Closing Date any such Permit; and
			7. no condition or requirement exists in any such Permit which does or would reasonably be expected to adversely affect the ownership, use, operation and maintenance of the Project by or on behalf of Purchaser after the Closing.
		3. As of the Closing Date, Seller holds all Project Permits (other than the Purchaser Permits). All Project Permits (other than the Purchaser Permits) have been obtained by Seller on or prior to the date required under applicable Law, and in any event on or prior to the Closing Date.
	6. Insurance. Section 3.15 of Seller’s Disclosure Schedule sets forth a true, complete and correct list and description of all insurance policies in force on the Execution Date with respect to the Project Assets, together with a statement of the aggregate amount of claims paid out within the past three (3) years and claims pending under each such insurance policy, in each case, relating to the Project, the Project Site or the Project Assets. As of the Execution Date, all such insurance policies are in full force and effect, all premiums due thereon have been paid and Seller is in compliance in all material respects with the terms and provisions of such insurance policies. Furthermore, solely as they relate to the Project, the Project Site and the Project Assets, as of the Execution Date: (a) there is no claim pending under any of such insurance policies as to which coverage has been questioned, denied or disputed by the underwriters of such insurance policies; and (b) Seller has received no written notice that the Project, the Project Site, or any Project Fixtures and Equipment or Project Improvements, or the operation thereof, will not be insurable or will be subject to exclusions arising from actual or potential defects in the Project Site or the Project Assets.
	7. Resource Data. Schedule 1.1(l) sets forth a true, complete and correct list or copy of all Resource Data. With respect to each item of Resource Data:
		1. Seller has made available to Purchaser true, correct and complete copies of all reports, studies, analyses, tests, monitoring results and assessments with respect to Resource Data measured or recorded at or with respect to the Project or related to the Project Site;
		2. the Resource Data is accurate in all material respects;
		3. Seller owns and possesses all right, title and interest in and to the Resource Data, free and clear of any Liens;
		4. Seller has not received any notification of disputes with respect to any Resource Data;
		5. the Resource Data is not subject to any outstanding injunction, judgment, decree, or judicial or administrative order, of any Governmental Authority; and
		6. no Person has assigned, transferred or conveyed any interest in the Resource Data or the information contained therein in any manner that would reasonably be expected to impair Purchaser’s right to use the Resource Data after the Closing.
	8. Environmental Attributes

. Neither Seller nor any of its Affiliates, as the case may be, has sold or transferred, or agreed to sell or transfer, or taken any actions or granted any options or rights to purchase energy, capacity or Environmental Attributes related to the electric power to be generated by the Project.

* 1. Environmental Matters

.

* + 1. (a) Part A of Schedule 1.1(g) contains a true, correct and complete list of all Environmental Permits that are Project Permits, (b) Part B of Schedule 1.1(g) contains a true, correct and complete list of all such Environmental Permits that have been obtained by or on behalf of Seller with respect to the Project or the Project Site as of the Execution Date, (c) Part C of Schedule 1.1(g) contains a true, correct and complete list of all such Environmental Permits for which Seller or any of its Affiliates has applied as of the Execution Date (other than those referenced in clause (b) above), and Part D of Schedule 1.1(g) contains a true, correct and complete list of all Environmental Permits that are Purchaser Permits.
		2. With respect to each Environmental Permit that is a Project Permit (other than a Purchaser Permit) that has been obtained as of the Execution Date or the Closing Date, as applicable:
			1. each such Environmental Permit is legal, valid, binding and in full force and effect;
			2. the completion of the transactions contemplated by this Agreement and the Ancillary Agreements will not affect the legality, validity, binding nature or force and effect of each such Environmental Permit being transferred to Purchaser pursuant to the applicable Assignment and Assumption Agreement, except with respect to the identity of the parties thereto as a result of such Assignment and Assumption Agreement;
			3. Seller is in compliance with the terms and conditions of each such Environmental Permit, and, to Seller’s Knowledge, no event has occurred which with the giving of notice or lapse of time, or both, would constitute non-compliance with such terms and conditions;
			4. each such Environmental Permit is properly in the name of the Project or Seller, as applicable;
			5. no Action is pending or, to Seller’s Knowledge, threatened in writing, in each case, which challenges the legality, validity or enforceability of, or threatens to revoke, suspend or modify, any such Environmental Permit;
			6. no notice of noncompliance or default has been received by Seller or any of its Affiliates in respect of any such Environmental Permit, and no information has been received by Seller or any of its Affiliates that would reasonably be expected to prevent Seller from maintaining any such Environmental Permit or from transferring to Purchaser on the Closing Date any such Environmental Permit; and
			7. no condition or requirement exists in any such Environmental Permit which does or would reasonably be expected to adversely affect the ownership, use, operation and maintenance of the Project by or on behalf of Purchaser after the Closing.
		3. Seller has made available to Purchaser true, correct and complete copies of (a) all Environmental Permits and applications therefor that are Project Permits (or applications therefor), (b) all material documents, reports and correspondence provided by Seller or any of its Affiliates to any Governmental Authority with respect to such Environmental Permits and applications, (c) all material documents, reports and correspondence received by Seller or any of its Affiliates from any Governmental Authority with respect to such Environmental Permits and applications, and (d) all environmental site assessment studies and reports and other environmental assessments, studies, audits and reports, including reports, assessments, studies, audits and reports relating to wetlands, air and emissions or discharges, or threatened or endangered species, that are in the possession or control of Seller or any of its Affiliates and which relate to environmental matters in connection with development, construction, ownership, use, operation or maintenance of the Project or the Project Site or which concern any condition of the environment with respect to the Project Site
		4. To Seller’s Knowledge, there exist no conditions, facts or circumstances that would reasonably be expected to (a) prevent, hinder, delay or restrict the ability of (i) Purchaser to obtain any Purchaser Permit that is an Environmental Permit, or (ii) Seller to transfer, or Purchaser to maintain after the Closing, any Project Permits that are Environmental Permits, in each case, as and when needed for the development, siting, permitting, design, engineering, supply, construction, installation, interconnection, testing, commissioning, ownership, use, operation or maintenance of the Project on the Project Site, (b) result in the imposition of Liabilities under, or noncompliance with, any Environmental Laws at the Project Site or by Seller, or (c) materially impact the ability of Seller or Purchaser, as applicable, to develop, site, permit, design, engineer, supply, construct, install, interconnect, test, commission, own, use, operate or maintain the Project.
		5. Seller (a) has not entered into or agreed to any judicial or administrative consent decree or order, and (b) is not subject to any judgment, decree, or judicial or administrative order, relating to compliance with any Environmental Law or to investigation or cleanup of Hazardous Materials or Environmental Conditions, in each case, relating to the Project or the Project Site. There are no Actions pending or, to Seller’s Knowledge, threatened under any Environmental Law relating to the Project or the Project Site.
		6. Seller is and has been for the past three (3) years in compliance in all material respects with all Environmental Laws and Environmental Permits with respect to the Project and the Project Site.
		7. There has been no Release of Hazardous Materials on, beneath or from the Project Site, except for Releases of Hazardous Materials that would not reasonably be expected to result in a claim by a Governmental Authority or other Person not affiliated with Purchaser or a requirement to conduct a Remediation.
		8. Except as set forth in Section 3.18.8 of Seller’s Disclosure Schedule, no species listed as threatened or endangered under any Environmental Law, or any applicable state or local counterpart, or a candidate for such status, or otherwise identified under Environmental Laws as having special status have been observed by Seller or any of its Affiliates or Representatives at the Project Site, (b) no bald or golden eagles or migratory birds or their nests have been observed on the Project Site, (c) no human remains or historical, archeological or paleontological resources (which for purposes of this representation shall mean “archeological resources” as defined under Environmental Laws) have been identified on the Project Site and (d) no wetlands or water bodies are located on the Project Site.
	1. Employee and Employee Benefits Matters.[[41]](#footnote-41)
		1. Seller does not employ and has never employed any employees.
		2. None of Seller or any of its Affiliates has any Liabilities with respect to any employees of Seller or any of its Affiliates or any other individuals (including independent contractors, contract workers, leased employees or temporary employees) that have performed work at or in connection with the Project or in connection with the business of Seller. None of Seller or any of its Affiliates has made any commitments or representations to any Person regarding: (a) potential employment by Purchaser or any of its Affiliates at the Project after the Closing Date; or (b) any terms and conditions of any such potential employment by Purchaser or any of its Affiliates following the Closing Date.
		3. Seller does not sponsor, maintain, contribute to or have any obligation to contribute to, and since the date of its creation has never sponsored, maintained, contributed to or had any obligation to contribute to, any Employee Benefit Plan.
		4. From and after the Closing Date, none of Purchaser or any of its Affiliates will incur, and no condition or set of circumstances would reasonably be expected to exist under which Purchaser or any of its Affiliates could incur, directly or indirectly, any Tax, penalty, fine, Liability, Loss or expense under ERISA, the Code or any other applicable Law, or pursuant to any indemnification or similar agreement, under the terms of or otherwise in respect of any employee compensation or benefit plan, program, agreement or arrangement, providing retirement, incentive compensation, health, disability, severance, life, change in control or equity compensation or benefits (including any employee benefit plan within the meaning of ERISA Section 3(3)), established or maintained by Seller or any of its Affiliates or ERISA Affiliates.
	2. Brokers

. All negotiations relative to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby have been carried out by Seller directly with Purchaser without the intervention of any Person on behalf of Seller in such manner as to give rise to any valid claim by any Person against Purchaser or any of its Affiliates or any of their respective Representatives for a finder’s fee, brokerage commission or similar payment.

* 1. Intellectual Property

. Schedule 1.1(f) contains a true, correct and complete list and description of all Project Intellectual Property. As of the Closing Date, Seller shall own or have the right to use all the Project Intellectual Property used in the operations of the Project, free and clear of all Liens other than Permitted Liens and restrictions applicable in the Project Contracts. No Person has asserted against Seller or any of its Affiliates a claim in writing that any Project Intellectual Property infringes or misappropriates the Intellectual Property of such or any other Person, and to Seller’s Knowledge, no Person is infringing or misappropriating any Project Intellectual Property.

* 1. Due Diligence

. Seller has made available for Purchaser’s review all material information in the possession or control of Seller or any Affiliate of Seller relating to the Project, including the Project Assets, or the Project Site in connection with Purchaser’s due diligence examination conducted with respect to the transactions contemplated by this Agreement. To Seller’s Knowledge, none of the information provided by Seller to Purchaser contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

* 1. Reports. Seller has delivered to Purchaser a true, correct and complete copy of each Report. The Reports neither individually nor in the aggregate indicate any event, result, occurrence, development, fact, change or effect of whatever nature or kind that has or would reasonably be expected to have a Seller Material Adverse Effect. To Seller’s Knowledge, there has been no material change in any findings or conclusions of any Report delivered by Seller to Purchaser other than for which Seller has redelivered such Report to Purchaser in final form as revised to address such change pursuant to Section 5.15.2.
	2. Disclosure

. No representation or warranty by Seller in this Agreement or any Ancillary Agreement to which Seller is or will be a party in connection with the transactions contemplated hereby, and no statement contained in Seller’s Disclosure Schedule or any certificate or other document furnished or to be furnished to Purchaser pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

* 1. Anti-Corruption

. None of Seller or any Affiliate of Seller, or any Person acting on behalf of Seller or any Affiliate of Seller, has, directly or indirectly, made contributions, gifts, or payments relating to any political activity or solicitation of business which was prohibited by Law or, on behalf of Seller, made any direct or indirect unlawful payment to any official or employee of any Governmental Authority, or established or maintained any unlawful or unreported funds. None of Seller or any Affiliate of Seller, or any Person acting on behalf of Seller or any Affiliate of Seller, has accepted or received any unlawful contribution, payment, gift, entertainment or expenditure.

* 1. Solvency. No petition or notice has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Seller. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of Seller’s assets or the income of Seller. Seller has no plan or intention of, nor has received any written notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution or of seeking the appointment of such a receiver, trustee, custodian or similar fiduciary.
	2. Seller’s Parent Guaranty and Purchaser Security Agreements. Each of Seller’s Parent Guarantor and Pledgor is duly formed, validly existing and in good standing, as applicable, under the Laws of the jurisdiction of its formation. Each of Seller, Seller’s Parent Guarantor and Pledgor has full power and authority to execute and deliver the Seller’s Parent Guaranty or Purchaser Security Agreements to which it is a party and to perform its obligations thereunder. The execution and delivery by each of Seller, Seller’s Parent Guarantor and Pledgor of the Seller’s Parent Guaranty or Purchaser Security Agreements and the performance each of Seller, Seller’s Parent Guarantor and Pledgor of its respective obligations thereunder have been duly and validly authorized by all necessary action. Each of Seller’s Parent Guaranty and the Purchaser Security Agreements is in full force and effect and constitutes valid and binding obligations of Seller, Seller’s Parent Guarantor or Pledgor, as the case may be, enforceable against Seller, Seller’s Parent Guarantor or Pledgor, as the case may be, in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the enforcement of creditors’ rights generally and to general principles of equity).
1. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrant to Seller that, except as set forth in Purchaser’s Disclosure Schedule, all of the statements contained in this ARTICLE IV are true and correct as of the Execution Date, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date). Each exception and other response to this Agreement set forth in Purchaser’s Disclosure Schedule is identified by reference to, or has been grouped under a heading referring to, a specific individual section of this Agreement, and, except as otherwise specifically stated with respect to such exception, relates only to such section and to other sections to the extent that the application of such exception or other response to such other sections is reasonably apparent on its face without further investigation.

* 1. Existence

. Purchaser is duly formed, validly existing and in good standing, as applicable, under the Laws of the jurisdiction of its formation. Purchaser has all requisite entity power and authority to own, operate and lease its properties and assets. Purchaser is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business transacted by it makes qualification necessary, except where the failure to be so qualified, licensed or in good standing would not be reasonably expected to have a Purchaser Material Adverse Effect.

* 1. Authority

. Purchaser has all requisite power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is (or will be) a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to complete the transactions contemplated hereby and thereby. The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party in connection with the transactions contemplated hereby, and the performance by Purchaser of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary action.

* 1. Binding Agreement

. This Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party have been (or will be when delivered) duly and validly executed and delivered by Purchaser and, assuming due and valid authorization, execution and delivery thereof by Seller and each other party thereto, this Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party are (or will be when delivered) valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the enforcement of creditors’ rights generally and to general principles of equity).

* 1. No Conflicts

. The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which it is (or will be) a party does not, and the performance by Purchaser of its obligations under this Agreement and the Ancillary Agreements to which it is (or will be) a party and the completion of the transactions contemplated hereby and thereby shall not:

* + 1. conflict with or result in a violation or breach of any of the terms, conditions or provisions of Purchaser’s organizational documents;
		2. assuming all of the consents and approvals set forth in Section 4.4 of Purchaser’s Disclosure Schedule (the “Purchaser’s Consents”) have been obtained or given, result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any Contract or other obligation (with or without notice or lapse of time, or both) to which Purchaser is a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained in writing (true, correct and complete copies of which have been furnished to Seller); or
		3. assuming all of the Purchaser’s Consents have been obtained or given, conflict with or result in a violation or breach of any term or provision of any Law applicable to Purchaser or any of its assets and properties.
	1. Governmental Approvals and Filings

. Except as set forth in Section 4.5 of Purchaser’s Disclosure Schedule, no consent or approval of, filing with or notice to, any Governmental Authority is required in connection with the execution, delivery and performance by Purchaser of this Agreement or any of the Ancillary Agreements to which Purchaser is (or will be) a party or the completion by Purchaser of the transactions contemplated hereby or thereby.

* 1. Legal Proceedings

. There are no Actions (a) outstanding or pending to which Purchaser is a party or (b) to Purchaser’s Knowledge, threatened against Purchaser or any of its assets and properties, which seek or would be reasonably expected to (i) result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement or any of the Ancillary Agreements, or (ii) individually or in the aggregate, have a Purchaser Material Adverse Effect.

* 1. Brokers

. All negotiations relative to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby have been carried out by Purchaser directly with Seller without the intervention of any Person on behalf of Purchaser in such manner as to give rise to any valid claim by any Person against Seller or any of its Affiliates or any of their respective Representatives for a finder’s fee, brokerage commission or similar payment.

* 1. Financial Resources

. Purchaser will have unrestricted cash sufficient to satisfy its obligations to pay the Purchase Price as and when required pursuant to Section 2.2.1.

4.9. Solvency. No petition or notice has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Purchaser. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of Purchaser’s assets or the income of Purchaser. Purchaser has no plan or intention of, nor has received any written notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution or of seeking the appointment of such a receiver, trustee, custodian or similar fiduciary.

1. COVENANTS
	1. Efforts to Close and Fulfillment of Conditions

. After the Execution Date and prior to the Closing:

* + 1. Each Party shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under Law to complete and make effective the transactions contemplated by this Agreement. Such actions shall include each Party using its commercially reasonable efforts to ensure satisfaction of the conditions precedent to its obligations hereunder, as soon as practicable after the Execution Date.
		2. Each Party shall use commercially reasonable efforts to refrain from taking (or omitting to take) any action which would reasonably be expected to materially delay the completion of the transactions contemplated by this Agreement; provided, however, that the filing by Seller of a petition for leave to intervene or notice of intent to comment in any proceeding(s) initiated by Purchaser in accordance with Section 5.2, or otherwise, shall not be deemed to be an action which would reasonably be expected to materially delay the completion of the transactions contemplated by this Agreement.
	1. Consents and Approvals

. After the Execution Date and prior to Closing, each Party shall provide reasonable cooperation to the other Party in obtaining consents or approvals of, making all filings with and giving all notices to Governmental Authorities or other Persons required to complete the transactions contemplated by this Agreement and the Ancillary Agreements. The Parties shall use commercially reasonable efforts to respond promptly and accurately to any requests for additional information made by any such Governmental Authority. The Parties agree that they shall consult with each other with respect to the transfer to Purchaser of the Project Assets or the obtaining by Purchaser or Seller of applicable Permits, consents, approvals and authorizations of all third parties and Governmental Authorities and, if applicable, the HSR Act filing. Subject to Section 5.6, each Party shall cooperate in good faith with the Governmental Authorities and undertake promptly all commercially reasonable actions required to complete lawfully the transactions contemplated by this Agreement. Seller shall request from the applicable counterparties to the Project Contracts the Seller’s Consents, in the forms reasonably acceptable to the Parties.

* 1. Reserved.
	2. Filings

. Each Party shall prepare, as soon as is practical following the execution of this Agreement, all necessary filings in connection with the transactions contemplated by this Agreement that may be required by Governmental Authorities under any applicable Laws. The Parties shall promptly make any appropriate or necessary subsequent or supplemental filings, and shall promptly furnish each other with copies of any notices, correspondence or other written communication from the relevant Governmental Authority.

* 1. HSR Filings

. If it is determined that the HSR Act will be applicable to the transactions contemplated by this Agreement, then each Party shall use commercially reasonable efforts to submit such filings no later than [\_\_\_\_\_\_\_\_\_\_\_], or such other period as may be mutually agreed between the Parties. No Party shall request early termination of the waiting period under the HSR Act. The Parties shall promptly furnish each other with copies of any notices, correspondence or other written communication from the relevant Governmental Authority, shall promptly make any appropriate or necessary subsequent or supplemental filings and shall cooperate in the preparation of such filings as is reasonably necessary and appropriate (provided, that such filings and attachments need not be exchanged with, or preapproved by, the other Party and provided, further, that any exchange of information between Seller and Purchaser in connection with any such filings shall be done in a manner that complies with applicable antitrust Laws). If HSR Act filings are required, the filing fee under the HSR Act shall be paid by Purchaser.

* 1. Limitation

. Notwithstanding the foregoing, nothing in Sections 5.1 through 5.5, inclusive, shall require, or be construed to require, Purchaser or Seller or any of their respective Affiliates to agree to: (a) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Purchaser or Seller or any of their respective Affiliates (other than pursuant to this Agreement); (b) waive any of their respective conditions to Closing set forth in Section 6.1 and Section 6.2; or (c) any modification or waiver of the terms and conditions of this Agreement.

* 1. Title Report, Survey, Title Insurance Commitment and Title Insurance Policy Matters.
		1. Within thirty (30) days after the Execution Date, Purchaser shall, at Seller’s cost and expense, use commercially reasonable efforts to obtain a preliminary title report with respect to each parcel of real property comprising the Project Site or that is the subject of a Project Real Property Agreement, including the Easements (the “Preliminary Title Report”).
		2. Within sixty (60) days after Purchaser’s receipt of the Preliminary Title Report, Purchaser shall, at Seller’s cost and expense, use commercially reasonable efforts to obtain a current ALTA/ACSM survey of the Project Site prepared by a [licensed surveyor / Certified Federal Surveyor (CFedS) acceptable to Purchaser][[42]](#footnote-42) (the “Surveyor”), in form and substance acceptable to Purchaser (the “Survey”), which Survey shall be in the name of, and prepared at the direction of Purchaser.
		3. Within thirty (30) days after Purchaser’s receipt of the Survey, Purchaser shall use commercially reasonable efforts to obtain a commitment for title insurance issued by the Title Company (the “Title Insurance Commitment”), to issue on the Closing Date, at Seller’s cost and expense, a title insurance policy insuring Purchaser’s rights in each parcel of real property comprising the Project Site or that is the subject of a Project Real Property Agreement, including the Improvements and the Easements as appurtenant easements, that: (a) is in form and substance as Purchaser may reasonably approve and contains such requirements, modifications and endorsements as Purchaser may reasonably require; (b) contains such additional affirmative coverage (at Purchaser’s cost and expense) as Purchaser may reasonably request; (c) is in such amount as Purchaser may negotiate with the Title Company; (d) insures that Purchaser is the sole fee owner of each parcel of real property comprising the Project Site and the sole holder of all rights, title and interests granted under the Project Real Property Agreements, subject to Permitted Liens and Permitted Encumbrances; (e) names Purchaser as the insured; (f) is issued as of the Closing Date by the Title Company; and (g) shows as exceptions only the Permitted Liens and the Permitted Encumbrances (the “Title Insurance Policy”).

5.7.4 Purchaser may object to any matters shown on the Title Insurance Commitment or the Survey, other than Permitted Liens, by delivering written notice (the “Title and Survey Objection Notice”) to Seller no later than twenty-one (21) days after receipt by Purchaser of the later of the Title Insurance Commitment and the Survey. If Purchaser does not deliver the Title and Survey Objection Notice within the prescribed 21-day period, all matters reflected on the Title Insurance Commitment and Survey shall be “Permitted Encumbrances”, and all matters reflected on the Title Insurance Commitment and the Survey to which Purchaser does not object in the Title and Survey Objection Notice shall be Permitted Encumbrances. Seller may, but shall have no obligation to, remove or rectify prior to Closing any matters identified as objections in the Title and Survey Objection Notice (the “Objectionable Title and Survey Matters”), other than Objectionable Title and Survey Matters Required to be Cured which Seller shall be obligated to promptly remove or rectify prior to Closing. Within fourteen (14) days after receipt of Purchaser’s Title and Survey Objection Notice, Seller shall provide Purchaser notice (“Seller’s Title/Survey Objection Response”) of those Objectionable Title and Survey Matters which Seller will remove or rectify, and those which Seller elects not to remove or rectify, provided that Seller shall be obligated to remove and rectify any Objectionable Title and Survey Matters Required to be Cured prior to Closing. Upon completion of such curative work, but prior to Closing, Seller shall cause the Title Company to deliver to Seller a revised Title Commitment that includes all matters cured by Seller.

5.7.5 Accommodation Agreements.

* + - 1. As soon as reasonably practicable following the Execution Date, Seller shall commence the Mineral Rights Negotiation Process and thereafter shall use commercially reasonable efforts to (i) deliver a form of non-disclosure agreement and the Accommodation Agreement in the form attached hereto as Exhibit M-1 or Exhibit M-2, including information regarding the Project location, to one hundred percent (100%) of the Mineral Operators listed on Schedule 1.1(o) and to all other Mineral Operators and Mineral Owners and (ii) pursue negotiation and execution of such non-disclosure agreements and, upon execution of any such non-disclosure agreements, pursue negotiation and execution of Accommodation Agreements, substantially and in all material respects in the form attached hereto as Exhibit M-1 or Exhibit M-2, with all such Mineral Operators and Mineral Owners prior to the Closing.
			2. From and after the Closing, for a period of seventy-two (72) months following the Closing Date, Seller shall reimburse Purchaser for any Accommodation Payment made by or on behalf of Purchaser within ten (10) Business Days of written request for reimbursement from Purchaser, provided that such written request for reimbursement shall contain reasonable documentation to substantiate the requested reimbursement amount and the basis of the Accommodation Payment.
	1. Conduct of Business

.

* + 1. Commencing on the Execution Date and ending on the earlier of the Closing Date and the date as of which this Agreement is validly terminated by Purchaser or Seller in accordance with this Agreement, except as otherwise consented to by Purchaser in writing, which consent shall not be unreasonably withheld, conditioned or delayed, Seller shall conduct its business in the ordinary course and consistent with applicable Laws, Project Permits and Good Operating Practices (including (a) keeping in full force and effect its legal existence, (b) preserving and maintaining the Project Assets as they are currently being preserved and maintained, (c) maintaining its Books and Records, (d) performing and complying in all material respects with the Project Contracts and (e) continuing to develop the Project in the ordinary course of business and consistent with Good Operating Practices).
		2. Without limiting the foregoing, Seller shall not, and shall not cause or permit its Affiliates with respect to the Project to, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed):
			1. enter into the Construction Agreements other than in substantially and in all material respects in the forms attached to this Agreement; provided, that Seller provides Purchaser with any proposed changes to such forms at least ten (10) Business Days prior to executing such Contract; provided, further that in no event shall such proposed changes (i) have or would reasonably be expected to have an adverse and material effect on the capacity, availability, operations (including costs of operations), maintenance (including the cost of maintenance), reliability, or safety (including safety of construction) of the Project; (ii) cause or would reasonably be expected to cause the Project not to achieve the Commercial Operation Date by the Commercial Operation Deadline; (iii) amend any of the performance remedies or warranties or the Technical Specifications (as defined in the EPC Agreement) applicable to the Project; or (iv) amend any of the defined terms or provisions from the EPC Agreement or any other Project Contract, to the extent such defined terms or provisions are referred to in this Agreement;
			2. except as contemplated in this Section 5.8.2, enter into any material Contract relating to the Project, the Project Assets or the Project Site;
			3. modify or amend (including change orders) in any material respect, terminate or assign, waive, release or assign any material rights or claims under or provide any material consent under, in each case, the EPC Agreement or any other Project Contract, including any modification, amendment, consent, waiver, release or assignment that: (i) has or would reasonably be expected to have an adverse and material effect on the capacity, availability, operations (including costs of operations), maintenance (including the cost of maintenance), reliability, or safety (including safety of construction) of the Project; (ii) causes or would reasonably be expected to cause the Commercial Operation Date not to occur by the Commercial Operation Deadline; (iii) amends any of the performance remedies or warranties or the Technical Specifications (as defined in the EPC Agreement) applicable to the Project; or (iv) amends any of the defined terms or provisions from the EPC Agreement or any other Project Contract, to the extent such defined terms or provisions are referred to in this Agreement; provided, further, that Seller shall consult with Purchaser at least five (5) Business Days prior to entering into, giving or making any such modifications, amendments, waivers, releases or assignments and provide Purchaser with copies of any such proposed modifications, amendments, waivers, releases or assignments at least five (5) Business Days prior to executing, delivering or approving the same;
			4. fail to take such reasonable action as is necessary to maintain, preserve, renew and keep in full force and effect the Project Permits or take or fail to take any reasonable action that would jeopardize the eligibility of the Project for the ITC, PTC, accelerated depreciation or other Renewable Energy Incentives, or materially and adversely affect the Environmental Attributes;
			5. take any action or fail to take any reasonable action which would reasonably be expected to materially adversely affect the Project or the Project Assets, including the capacity, availability, operations, reliability, schedule or safety (including safety of construction) of the Project;
			6. sell, lease, or otherwise dispose of (other than in the ordinary course of business in accordance with Good Operating Practices), or incur or permit to exist a Lien (other than a Permitted Lien) on, any of the material Project Assets;
			7. except in connection with obtaining or maintaining the Project Permits required or permitted pursuant to this Agreement, agree or consent in writing to any matter in connection with any material proceeding by or before any Governmental Authority related to the Project;
			8. amend or supplement in any material respect or terminate any Project Permit or any related application therefor;
			9. cease to maintain insurance coverage under the Insurance Policies in accordance with Section 5.10; or
			10. enter into any agreement or otherwise commit to take any actions described in the foregoing clauses.
		3. Notwithstanding Section 5.8.1 or Section 5.8.2, or any other provision in this Agreement, Seller may take reasonable actions with respect to emergency situations or to comply with Project Permits or applicable Laws.
	1. Purchaser’s Inspection Right

. Commencing on the Execution Date and ending on the earlier of the Closing Date and the date as of which this Agreement is validly terminated by Purchaser or Seller in accordance with this Agreement, Purchaser, its Related Persons and its Representatives shall have reasonable access, upon reasonable prior notice, to the Project, the Project Site, the Project Assets and the Books and Records, all for purposes of inspection and review; provided, however, that any investigation shall be conducted during normal business hours in such manner as not to interfere unreasonably with the operation of the Project and Purchaser shall require each Person conducting or participating in any such investigation to comply with Seller’s reasonably adopted procedures relating to safety and security. In furtherance of the foregoing, Seller shall take all reasonable actions necessary to allow, permit, or obtain the right of Purchaser, its Related Persons and its Representatives to access the Project Site in order to confirm the progress of development of the Project and to perform due diligence of survey work, testing, geotechnical drilling and any other studies Purchaser deems necessary in its reasonable discretion, provided that Purchaser complies with applicable Law and Seller’s reasonable safety and security procedures at the Project. At Purchaser’s request, Seller shall (a) include Purchaser, its Related Persons and its Representatives in weekly meetings or teleconferences to discuss the progress of development and construction of the Project, and (b) include Purchaser, its Related Persons, and Representatives in communications with, or may authorize Purchaser to have independent communications with, the Construction Contractors. Purchaser may from time to time offer input to Seller for consideration related to material Contracts and performance thereunder. From and after the Execution Date, Seller shall promptly advise Purchaser of any material notices, demands, claims, requests for information or other communications received relating to or in connection with the Project and shall not take any action thereto without the consent and direction of Purchaser, such consent not to be unreasonably withheld, delayed or conditioned. In addition, Seller shall provide other management reports for the Project, including progress reports received from the Construction Contractors and reports regarding owner supplied equipment, reports from Governmental Authorities and reports from counterparties to material Contracts, in each case, in the form, and at the times, historically prepared or received by Seller and its Affiliates in the ordinary course, or as soon as practicable upon receipt from such third parties, as applicable.

* 1. Insurance

.

* + 1. Effective on the date that construction work is to begin at the Project Site, Seller shall, or shall cause an Affiliate or Construction Contractor to, obtain and thereafter at all times during the performance of such construction work, shall maintain, insurance in accordance with the requirements set forth in Schedule 5.10. Purchaser shall and its Affiliates shall be a named insured on such insurance policies in accordance with the requirements of Schedule 5.10.
		2. After the Closing, Purchaser shall have the right to submit to Seller any claims for any damages, Losses, expenses or Liabilities of the Project that are covered by the insurance policies described in Section 3.15 or Section 5.10.1 (collectively, the “Insurance Policies”) arising out of insured incidents to the extent occurring from the date coverage thereunder first commenced until the Closing. With respect to any such claim, Seller shall submit such claim and use its commercially reasonable efforts to administer such claims on behalf of Purchaser and to seek reasonable recovery under the applicable Insurance Policies covering a Loss of the Project to the same extent as it would if such Loss were a Loss of Seller and to the extent that the terms and conditions of any such policies so allow (it being understood that (a) Seller shall have the right to administer and control such claims and (b) such claims shall be subject, in each case as the sole liability or obligation of Purchaser and Seller, to any and all applicable deductibles, retentions, self-insurance provisions or any payment or reimbursement obligations in respect thereof, and the exhaustion of existing aggregate limits), and Seller shall pay to Purchaser the amount of such recovery within fifteen (15) days after receipt thereof, net of any out-of-pocket costs and expenses (including reasonable legal fees and expenses) and increased premiums reasonably incurred by Seller in seeking or obtaining such recovery. Through the Final Completion Date, all insurance proceeds received for any and all covered losses under the Insurance Policies shall be used to restore the Project back to its original condition prior to all insurable loss events.
	1. Certain Schedule Updates; Update of Seller’s Disclosure Schedule.
		1. Certain Schedule Updates. Prior to Closing, Seller shall promptly supplement or amend:
			1. Schedule 1.1(c) to include thereon any additional Project Contracts entered into by Seller after the Execution Date in accordance with this Agreement (and update Section 3.5 and Section 3.6 of Seller’s Disclosure Schedule, as applicable, to reflect any additional Seller’s Consents or consents, approvals, filings or notices of or to Governmental Authorities, respectively, that are required in respect of such additional Project Contracts);
			2. Schedule 1.1(d) to include thereon any additional Project Fixtures and Equipment acquired by Seller after the Execution Date in accordance with this Agreement;
			3. Schedule 1.1(e) to include thereon any additional Project Improvements constructed on the Project Site after the Execution Date in accordance with this Agreement;
			4. Schedule 1.1(f) to include thereon any additional Project Intellectual Property acquired by or licensed to Seller after the Execution Date in accordance with this Agreement;
			5. Part B of Schedule 1.1(g) to include thereon any Project Permits listed in Part C of Schedule 1.1(g) that Seller has obtained after the Execution Date in accordance with this Agreement;
			6. Schedule 1.1(k) to include thereon any additional Reports received by Seller after the Execution Date with respect to the Project, the Project Assets or the Project Site; and
			7. Schedule 1.1(l) to include thereon any additional Resource Data obtained after the Effective Date with respect to the Project, the Project Assets or the Project Site.

Such Schedules shall be deemed so supplemented or amended for all purposes of this Agreement as if such supplements or amendments had existed as of the Execution Date.

* + 1. Update of Seller’s Disclosure Schedule. Purchaser and Seller shall use commercially reasonable efforts to refrain from taking any action which would render any representation or warranty contained in this Agreement to be inaccurate as of the Closing. Prior to the Closing, Seller shall promptly supplement or amend Seller’s Disclosure Schedule previously delivered by Seller with respect to any matter arising after the Execution Date which, if existing, occurring or known on or before the Execution Date, would have been required to be set forth or described in Seller’s Disclosure Schedule (each, a “Disclosure Schedule Update”). Seller shall deliver any such Disclosure Schedule Update to Purchaser no later than five (5) Business Days after the discovery of any such matter by Seller. Any disclosure in a Disclosure Schedule Update shall be deemed to have been disclosed solely for purposes of determining whether the condition precedent set forth in Section 6.1.1 has been satisfied. If the Closing occurs, the making of any such disclosure in any such Disclosure Schedule Update shall not be deemed to have cured the breach of any representation, warranty, covenant or agreement relating to the matter set forth in the Disclosure Schedule Update for purposes of Purchaser’s right to indemnification as set forth in Section 8.1.1 and Section 8.1.2.
	1. No Solicitation of Competing Transaction

. After the Execution Date and prior to the earlier of the Closing Date and the date as of which this Agreement is validly terminated by Purchaser or Seller in accordance with this Agreement, Seller shall not, and shall not authorize any of its Affiliates or their respective Representatives, directly or indirectly, through any Representatives or otherwise (except as may be required by applicable Law) to: (a) solicit, initiate, or facilitate the making, submission or announcement of any Acquisition Proposal to any Person other than Purchaser or an Affiliate of Purchaser; (b) furnish any nonpublic information regarding Seller, the Project, the Project Assets or the terms of or transactions contemplated by this Agreement, to any Person other than Purchaser or an Affiliate of Purchaser in connection with or in response to an Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal; or (c) engage in discussions or negotiations with any Person other than Purchaser or an Affiliate of Purchaser with respect to any Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal. In the event Seller, any of its Affiliates, or any of their respective Representatives receives any Acquisition Proposal by any Person other than Purchaser or an Affiliate of Purchaser, Seller shall: (i) immediately notify Purchaser of receipt of such Acquisition Proposal; (ii) disclose the details of the Acquisition Proposal to Purchaser and provide copies of any written materials related thereto; (iii) comply with the covenants set forth in clauses (a), (b), and (c) of this Section 5.12; and (iv) immediately inform any and all third parties making the Acquisition Proposal of the covenants and prohibitions set forth in this Section 5.12.

* 1. Tax Covenants. After the Execution Date and prior to Closing, Seller shall not make any new, or change any existing, material election with respect to Taxes, or settle any Tax liability in a manner that would reasonably be expected to have a material adverse effect on Purchaser after the Closing.
	2. Release of Credit Support Obligations.

 At or promptly following the Closing, Purchaser shall use commercially reasonable efforts to replace each of the non-cash Credit Support Obligations set forth on Schedule 5.14 with parent guarantees, letters of credit, bonds, indemnities or another non-cash credit assurance of a comparable and sufficient nature that satisfies the requirements of the counterparties specified in Schedule 5.14, to the extent such substitute credit support arrangements are required; provided that, if Purchaser is not successful in obtaining a release or, with Seller’s assistance, a replacement of any such Credit Support Obligations at Closing, then Seller or its Affiliates, as applicable, shall keep in place such Credit Support Obligations for ten (10) Business Days following Closing, after which time Seller and its Affiliates shall have no further obligation to keep in place such Credit Support Obligations.

* 1. Reports; Authorizations.
		1. Prior to the Reports Cut-Off Date, Seller shall deliver to Purchaser a true, correct and complete copy of each Report in respect of the Project and Project Site in final form or such other form as received by Seller. Each such Report (and all Reports in the aggregate), including any Reports delivered pursuant to Section 5.15.2, shall not indicate any event, result, occurrence, development, fact, change or effect of whatever nature or kind that has or would reasonably be expected to have a Seller Material Adverse Effect.
		2. If after delivery to Purchaser there is a material change in any findings or conclusions of a Report delivered by Seller to Purchaser, Seller shall redeliver such Report to Purchaser in final form as revised to address such change.
		3. Seller shall obtain letters or other authorizations from such Persons who prepared the Reports that are part of the Project Assets as Purchaser may reasonably request, which letters or other authorizations will allow Purchaser to rely on such Reports.
	2. Reimbursement of Purchaser-Paid Construction Costs. From and after the Closing Date, Seller shall reimburse Purchaser for any Construction Costs incurred and paid by Purchaser.
	3. Interconnection Agreement.

 Seller shall provide Purchaser true, correct and complete copies of all material documentation, and material correspondence with Transmission Provider, in connection with the Interconnection Agreement and obtaining interconnection rights for the Project pursuant thereto. Purchaser may review and comment on the proposed Interconnection Agreement with respect to matters for which Purchaser may have Liability or which affect the interconnection rights after the Closing Date as reasonably and timely requested by Purchaser. Purchaser shall cooperate and respond to any reasonable and timely request from Seller for input or information with respect to obtaining Interconnection Rights with respect to the Project. Seller may not enter into the final Interconnection Agreement without the prior written approval of Purchaser (such approval not to be unreasonably withheld, conditioned or delayed).

1. CONDITIONS TO CLOSING
	1. Purchaser’s Conditions Precedent

. The obligations of Purchaser hereunder to execute or deliver the items it is required to deliver pursuant to Section 2.5.1 and to complete the Closing are subject to the fulfillment to the reasonable satisfaction of Purchaser, at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by Purchaser in its sole discretion):

* + 1. Representations and Warranties. Each of the representations and warranties made by Seller in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made by Seller on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects), except for (a) those representations and warranties qualified by “Seller Material Adverse Effect”, “material” and “materially”, which shall be true and correct in all respects, and (b) the Fundamental Seller Representations, which shall be true and correct in all respects.
		2. Performance. Seller shall have performed and complied in all material respects with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Seller at or before the Closing.
		3. Law. There shall not be in effect on the Closing Date any Law restraining, enjoining or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement or the Ancillary Agreements.
		4. HSR Act. If applicable, the termination or expiration of the waiting period under the HSR Act necessary for the completion of the transactions contemplated by this Agreement shall have occurred.
		5. Purchaser’s Consents. All of the Purchaser’s Consents (other than, if applicable, the termination or expiration of the waiting period under the HSR Act necessary for the completion of the transactions contemplated by this Agreement to occur, all of which are addressed in Section 6.1.4) shall have been duly obtained, made or given and shall be in full force and effect, as applicable.
		6. Deliveries. Seller shall have executed and delivered, or caused to be executed and delivered (as applicable), to Purchaser the items set forth in Section 2.5.2.
		7. Project Schedule. All Project Contracts, current project schedules (as of the Closing Date) and Project Permits associated with the Project reflect and support the achievement of the Commercial Operation Date on or prior to the Commercial Operation Deadline.
		8. Status of the Project. The Project shall have achieved Closing Completion in accordance with the EPC Agreement, and no change, event or occurrence shall have occurred thereafter that would result in the Project not satisfying any of the requirements of Closing Completion on the Closing Date.
		9. Power from the Project. The Project shall not, in whole or in part, have been synchronized to the electric transmission system.
		10. Begin Construction. Seller has provided information, documentation and certifications satisfactory to Purchaser, in Purchaser’s sole discretion, confirming that, for purposes of the Begin Construction Guidance: (a) construction of the Project[, any Facility in the Project,][[43]](#footnote-43) and any other property that is part of the Project, including the Project Assets, began in [\_\_\_\_\_];[[44]](#footnote-44) and (b) neither the Physical Work Test nor the Five Percent Safe Harbor (as such terms are defined in the Begin Construction Guidance) were satisfied in any earlier year with respect to the Project[, any Facility in the Project,][[45]](#footnote-45) and any other property that is part of the Project, including the Project Assets.
		11. Seller’s Parent Guaranty. Seller’s Parent Guaranty shall be in full force and effect.
		12. Title Insurance Policy. The Objectionable Title and Survey Matters Required to be Cured shall have been cured by Seller to Purchaser’s reasonable satisfaction, and the Title Company shall be in a position, upon Closing, to issue the Title Insurance Policy to Purchaser as contemplated by Section 5.7.3.
		13. No Seller Material Adverse Effect. No Seller Material Adverse Effect shall exist nor shall any event(s) have occurred or circumstance(s) exist that, individually or in the aggregate, would reasonably be expected to result in a Seller Material Adverse Effect.
		14. Project Permits. The Project Permits required to be transferred to Purchaser as of Closing, or other Permits required to be issued to Purchaser as of the Closing, in each case, under applicable Law, shall have been so transferred or issued in accordance with applicable Law, and shall be valid and binding and in full force and effect.
		15. Phase I ESA. Purchaser has received a Phase I Environmental Site Assessment (“ESA”) for the Project Site, current and valid on the Closing Date under ASTM Standard Practice E1527-13 for ESAs, addressed to Purchaser as the user, or accompanied by a reliance letter in form and substance reasonably satisfactory to Purchaser.
		16. Interconnection Rights. The Interconnection Agreement has been finalized and executed by the parties thereto in accordance with Section 5.12, any necessary FERC acceptance of the Interconnection Agreement shall have been obtained, and the Interconnection Agreement provides all rights necessary for the Project to interconnect the full amount of the electrical capacity from the Project to the transmission system of Transmission Provider at the Point of Interconnection, which amount shall not be less than the Planned Project Size of electrical capacity.
	1. Seller’s Conditions Precedent

. The obligations of Seller hereunder to execute or deliver the items it is required to deliver pursuant to Section 2.5.2 are subject to the fulfillment, to the reasonable satisfaction of Seller at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by Seller in its sole discretion):

* + 1. Representations and Warranties. Each of the representations and warranties made by Purchaser in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made by Purchaser on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects), except for (a) those representation and warranties qualified by “Purchaser Material Adverse Effect”, “material” and “materially”, which shall be true and correct in all respects, and (b) the Fundamental Purchaser Representations, which shall be true and correct in all respects.
		2. Performance. Purchaser shall have performed and complied in all material respects with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Purchaser at or before the Closing.
		3. Law. There shall not be in effect on the Closing Date any Law restraining, enjoining or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement or the Ancillary Agreements.
		4. HSR Act. If applicable, the termination or expiration of the waiting period under the HSR Act necessary for the completion of the transactions contemplated by this Agreement shall have occurred.
		5. Seller’s Consents. The Seller’s Consents shall have been duly obtained, made or given and shall be in full force and effect.
		6. Deliveries. Purchaser shall have executed and delivered, or caused to be executed and delivered (as applicable), to Seller the items set forth in Section 2.5.1 and shall have paid the Closing Payment.
	1. Delayed Closing and Commercial Operation. Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement:
		1. Liquidated Damages for Delayed Closing Date. If the Closing Date is not achieved by the Closing Deadline, then the Closing Payment shall be reduced in accordance with Schedule 6.3, and such reduction shall constitute liquidated damages.
		2. Liquidated Damages for Delayed Commercial Operation Date. If the Commercial Operation Date is not achieved by the Commercial Operation Deadline, then the Commercial Operation Payment shall be reduced in accordance with Schedule 6.3, and such reduction shall constitute liquidated damages.
		3. Liquidated Damages Not a Penalty. The Parties acknowledge and agree that actual damages, costs or expenses of any delay of the Closing Date or the Commercial Operation Date would be difficult to ascertain and that the liquidated damages remedy provided for in this Section 6.3 is a fair and equitable amount to reimburse any Purchaser Indemnified Parties for damages sustained due to such delay and is not a penalty. On and after the Closing Date, the remedies set forth in this Section 6.3 shall be the sole and exclusive remedy of the Purchaser Indemnified Parties for failure to achieve (a) the Closing Date by the Closing Deadline and (b) the Commercial Operation Date by the Commercial Operation Deadline, and the Purchaser Indemnified Parties shall not be entitled to a rescission of this Agreement or to any further indemnification rights or claims of any nature whatsoever in respect of such delay.
1. TERMINATION
	1. Termination Prior to Closing

. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned:

* + 1. at any time before the Closing, by mutual written consent of the Parties;
		2. at any time before the Closing, by Seller or Purchaser upon written notice to the other Party, in the event that any final and non-appealable Law becomes effective which restrains, enjoins or otherwise prohibits or makes illegal the completion of the transactions contemplated by this Agreement or the Ancillary Agreements;
		3. at any time before the Closing, by Purchaser upon written notice to Seller, if: (a) there has been a breach by Seller of any representation, warranty, covenant or agreement contained in this Agreement or any Ancillary Agreement to which it is a party which would result in a failure of, or inability of Seller to satisfy, any condition set forth in Section 6.1, and such breach has not been cured to Purchaser’s reasonable satisfaction within thirty (30) days following Seller’s receipt of written notice of such breach, provided that such 30-day period shall be extended if: (i) such breach is reasonably capable of cure and curing such breach reasonably requires more than thirty (30) days; (ii) Seller commences such cure within such 30-day period and diligently prosecutes and completes such cure before the Outside Date; and (iii) Seller timely pays to Purchaser all liquidated damages in accordance with Section 6.3; (b) a Disclosure Schedule Update is delivered to Purchaser that discloses a Seller Material Adverse Effect has occurred, which Seller Material Adverse Effect (i) was not caused by a breach by Purchaser of any provision of this Agreement or any Ancillary Agreement to which it is a party and (ii) has not been cured to Purchaser’s reasonable satisfaction within thirty (30) days following Seller’s delivery to Purchaser of such Disclosure Schedule Update, provided that such 30-day period shall be extended if: (x) such Seller Material Adverse Effect is reasonably capable of cure and curing such Seller Material Adverse Effect reasonably requires more than thirty (30) days; (y) Seller commences such cure within such 30-day period and diligently prosecutes and completes such cure before the Outside Date; and (z) Seller timely pays to Purchaser all liquidated damages in accordance with Section 6.3; or (c) there has been a breach by Seller or Pledgor of any representation, warranty, covenant or agreement contained in any Purchaser Security Agreement to which it is a party, and such breach has not been cured to Purchaser’s reasonable satisfaction within five (5) Business Days following Seller’s receipt of written notice of such breach, provided that such 5-Business Day period shall be extended if: (i) such breach is reasonably capable of cure and curing such breach reasonably requires more than five (5) Business Days; and (ii) Seller commences such cure within such 5-Business Day period and diligently prosecutes and completes such cure within an additional five (5) Business Days;
		4. at any time before the Closing, by Seller upon written notice to Purchaser, if: (a) there has been a breach by Purchaser of any representation, warranty, covenant or agreement contained in this Agreement or any Ancillary Agreement to which it is a party which would result in a failure of, or inability of Purchaser to satisfy, any condition set forth in Section 6.2, and such breach has not been cured to Seller’s reasonable satisfaction within thirty (30) days following Purchaser’s receipt of written notice of such breach, provided that such 30-day period shall be extended if: (i) such breach is reasonably capable of cure and curing such breach reasonably requires more than thirty (30) days; and (ii) Purchaser commences such cure within such 30-day period and diligently prosecutes and completes such cure before the Outside Date; or (b) a Purchaser Material Adverse Effect has occurred, which Purchaser Material Adverse Effect: (i) was not caused by a breach by Seller of any provision of this Agreement or any Ancillary Agreement to which it is a party; and (ii) cannot be cured to Seller’s reasonable satisfaction within thirty (30) days following Purchaser’s notification to Seller thereof, provided that such thirty 30-day period shall be extended if: (x) such Purchaser Material Adverse Effect is reasonably capable of cure and curing such Purchaser Material Adverse Effect reasonably requires more than thirty (30) days; and (y) Purchaser commences such cure within such thirty 30-day period and diligently prosecutes and completes such cure before the Outside Date;
		5. at any time following [\_\_\_\_\_\_\_\_\_\_][[46]](#footnote-46) (the “Outside Date”), (a) by Purchaser upon written notice to Seller, if the Closing shall not have occurred on or before such date and such failure to complete the Closing is not caused by a breach by Purchaser of this Agreement or any Ancillary Agreement to which it is a party, and (b) by Seller upon written notice to Purchaser if the Closing shall not have occurred on or before such date and such failure to complete the Closing is not caused by a breach by Seller of this Agreement or any Ancillary Agreement to which it is a party;
		6. by Purchaser, (a) if Purchaser has not received from Seller by [\_\_\_\_\_\_\_\_\_\_][[47]](#footnote-47) (the “Reports Cut-Off Date”), all of the Reports, in form and substance reasonably acceptable to Purchaser and which, in any event, individually or in the aggregate, do not disclose any event, result, occurrence, development, fact, change or effect of whatever nature or kind that has or would reasonably be expected to have a Seller Material Adverse Effect; or (b) if Seller has redelivered a Report to Purchaser pursuant to Section 5.15.2 which Purchaser, in the exercise of Purchaser’s reasonable discretion, has determined has or would reasonably be expected to have a Seller Material Adverse Effect.
		7. Purchaser Bankruptcy. By Seller upon written notice to Purchaser, upon the Bankruptcy of Purchaser; or
		8. Seller Bankruptcy. By Purchaser upon written notice to Seller, upon the Bankruptcy of Seller, Seller’s Parent Guarantor or Pledgor.
	1. Effect of Termination or Breach Prior to Closing

. If this Agreement is validly terminated, then: (a) all further obligations of theParties under this Agreement (other than the provisions which by their terms are intended to survive the expiration or termination of this Agreement, including the provisions of Section 3.20 (Brokers), Section 4.7 (Brokers), Section 5.9 (Purchaser’s Inspection Rights), ARTICLE XI (Dispute Resolution), ARTICLE XII (Limited Remedies and Damages), Section 13.1 (Notices), Section 13.2 (Payments), Section 13.3 (Entire Agreement), Section 13.4 (Expenses), Section 13.5 (Public Announcements), Section 13.6 (Confidentiality), Section 13.9 (No Construction Against Drafting Party), Section 13.10 (No Third Party Beneficiary), Section 13.11 (Headings), Section 13.12 (Invalid Provisions), Section 11.2 (Governing Law), Section 13.13 (No Assignment; Binding Effect), and this Section 7.2 which shall continue to apply following any such termination) shall be terminated without further Liability of any Party to the other Party; and (b) other than in the case of termination by Seller pursuant to Section 7.1.4, Seller shall promptly refund to Purchaser all Payments made hereunder prior to the date of such termination. If this Agreement is validly terminated pursuant to Section 7.1.3 or Section 7.1.4 by Purchaser or Seller, as applicable, as a result of a breach by the non-terminating Party, then, subject to Section 12.2, the terminating Party shall be entitled to all rights and remedies available to it with respect to such breach, including, in the case of termination by Purchaser pursuant to Section 7.1.3, the remedies in this Section.

1. INDEMNIFICATION
	1. Indemnification by Seller

. Subject to the limitations set forth in Section 8.4 (Limitations of Liability), Section 8.5 (Indemnification in Case of Certain Liability), Section 9.3 (Seller’s Tax Indemnification), Section 10.1 (Survival), Section 10.2 (No Other Representations) and ARTICLE XII (Limited Remedies and Damages), if the Closing occurs, Seller agrees to indemnify and hold Purchaser and its Related Persons (each, a “Purchaser Indemnified Party”), harmless from and against (and to reimburse each Purchaser Indemnified Party as the same are incurred for) any and all Losses incurred by any Purchaser Indemnified Party resulting from any of the following:

* + 1. any breach of a representation or warranty made by Seller in this Agreement;
		2. the breach by Seller of, or default in the performance by Seller of, any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement or any Ancillary Agreement to which it is a party;
		3. any fraud or willful misconduct by Seller in connection with this Agreement or the Ancillary Agreements or the transactions contemplated hereby or thereby;
		4. the Excluded Assets or the Excluded Liabilities; provided, that any Purchaser Indemnified Party shall have the right, at such party’s sole discretion, to elect to pursue recovery for any such Losses under either Section 8.1.1 (with respect to Section 3.18 (Environmental Matters)) or this Section 8.1.4 (with respect to Section 2.1.4(a) (Excluded Liabilities));
		5. the Construction Costs; or
		6. the Accommodation Payments.
	1. Indemnification by Purchaser

. Subject to the limitations set forth in Section 8.4 (Limitations of Liability), Section 8.5 (Indemnification in Case of Certain Liability), Section 10.1 (Survival), Section 10.2 (No Other Representations) and ARTICLE XII (Limited Remedies and Damages), if the Closing occurs, Purchaser hereby agrees to indemnify and hold Seller and its Related Persons (each, a “Seller Indemnified Party”) harmless from and against (and to reimburse each Seller Indemnified Party as the same are incurred for) any and all Losses incurred by any Seller Indemnified Party resulting from any of the following:

* + 1. any breach of a representation or warranty made by Purchaser in this Agreement;
		2. the breach by Purchaser of, or default in the performance by Purchaser of, any covenant, agreement or obligation to be performed by Purchaser pursuant to this Agreement or any Ancillary Agreement to which it is a party;
		3. any fraud or willful misconduct by Purchaser in connection with this Agreement or the Ancillary Agreements or the transactions contemplated hereby or thereby; or
		4. the Assumed Liabilities.
	1. Method of Asserting Claims

.

* + 1. Notification of Claims. If any Purchaser Indemnified Party or Seller Indemnified Party (each, an “Indemnified Party”) asserts that a Party has become obligated to the Indemnified Party pursuant to this Agreement other than pursuant to ARTICLE IX (as so obligated, an “Indemnifying Party”), or if any Claim is begun, made or instituted as a result of which the Indemnifying Party may become obligated to the Indemnified Party hereunder, then in each instance the Indemnified Party shall notify the Indemnifying Party promptly and shall cooperate with the Indemnifying Party, at the Indemnifying Party’s expense, to the extent reasonably necessary for the resolution of such Claim or in the defense of such Claim, including making available any information, documents and things in the possession of the Indemnified Party. Notwithstanding the foregoing notice requirement, the right to indemnification hereunder shall not be affected by any failure to give, or delay in giving, notice, unless, and only to the extent that, the rights and remedies of the Indemnifying Party shall have been prejudiced as a result of such failure or delay. Any assertion by an Indemnified Party that an Indemnifying Party is liable to the Indemnified Party for indemnification pursuant to Section 8.1 or Section 8.2 above must be delivered to the Indemnifying Party prior to the expiration date (if applicable) of the representation, warranty, covenant, agreement or obligation giving rise to such indemnification obligation, as provided in Section 10.1.
		2. Defense of Claims. In fulfilling its obligations under this Section 8.3, after the Indemnifying Party has provided each Indemnified Party with a written notice of its agreement to indemnify each Indemnified Party under this Section 8.3, as between such Indemnified Party and the Indemnifying Party, the Indemnifying Party shall have the right to investigate, defend, settle or otherwise handle, with the aforesaid cooperation, any Claim brought by a third party in such manner as the Indemnifying Party may reasonably deem appropriate; provided, that: (a) the Indemnifying Party will not consent to any settlement or entry of judgment imposing any obligations on any Indemnified Parties, other than financial obligations for which such Person will be indemnified hereunder, unless such Person has consented in writing to such settlement or judgment (not to be unreasonably withheld, conditioned or delayed); and (b) the Indemnifying Party will not consent to any settlement or entry of judgment unless, in connection therewith, the Indemnifying Party obtains a full and unconditional release of the Indemnified Party from all liability with respect to such Claim. Notwithstanding the Indemnifying Party’s election to assume the defense or investigation of such Claim, the Indemnified Party shall have the right to employ separate counsel (at its own cost except as provided below) and to reasonably participate in the defense or investigation of such Claim, which participation shall be at the expense of the Indemnifying Party, if: (a) on the advice of counsel to the Indemnified Party use of counsel of the Indemnifying Party’s choice would reasonably be expected to give rise to a conflict of interest; (b) the Indemnifying Party shall authorize the Indemnified Party to employ separate counsel at the Indemnifying Party’s expense; or (c) separate counsel is retained to represent the Indemnifying Party in any action which seeks relief other than monetary damages against the Indemnified Party to the extent such representation is related to such relief.
	1. Limitations of Liability

.

* + 1. Claim Threshold. Notwithstanding anything to the contrary contained in this Agreement, (a) Seller shall not have liability for its obligations under Section 8.1 until the aggregate amount of all Losses incurred by the Purchaser Indemnified Parties equals or exceeds one-half of one percent (0.5%) of the Purchase Price (the “Claim Threshold”), in which event Seller shall become liable for the aggregate Losses under Section 8.1; it being understood and agreed that the Claim Threshold shall not apply in the event of fraud, willful misconduct or to claims for indemnification relating to Excluded Assets, Excluded Liabilities, Construction Costs, the Fundamental Seller Representations, or ARTICLE IX (Tax Matters), in each case for which Seller shall become liable for all such Losses, whether or not the Claim Threshold has been reached; and (b) Purchaser shall have no liability for its obligations under Section 8.2 until the aggregate amount of all Losses incurred by the Seller Indemnified Parties equals or exceeds the Claim Threshold, in which event Purchaser shall become liable for the aggregate Losses under Section 8.2; it being understood and agreed that the foregoing Claim Threshold shall not apply in the event of fraud, willful misconduct or to claims for indemnification relating to Assumed Liabilities, the Fundamental Purchaser Representations, or ARTICLE IX (Tax Matters), in each case for which Purchaser shall become liable for all such Losses, whether or not the Claim Threshold has been reached.
		2. Cap Amount. In no event shall: (a) Seller’s aggregate liability arising out of its indemnification obligations under Section 8.1 or otherwise in any respect of or relating to this Agreement, exceed the Purchase Price; it being understood and agreed that the foregoing limitation shall not apply in the event of fraud or willful misconduct committed by Seller or its Related Persons, or to claims for indemnification relating to relating to Excluded Assets, Excluded Liabilities, Construction Costs, the Fundamental Seller Representations, ARTICLE IX (Tax Matters) or to any claim under Section 12.3 (Specific Performance), provided that any such excluded indemnifiable Losses shall not be deemed to count against or otherwise reduce such limitation on Seller’s aggregate liability, and provided, further, that, except with respect to Construction Costs or fraud or willful misconduct committed by Seller or its Related Persons, all claims for indemnification pursuant to such sections shall not, under any circumstances, in the aggregate, exceed the Purchase Price; and (b) Purchaser’s aggregate liability arising out of its indemnification obligations under Section 8.2 exceed the Purchase Price; it being understood and agreed that the foregoing limitation shall not apply in the event of fraud or willful misconduct committed by Purchaser or its Related Persons, or to claims for indemnification relating to Assumed Liabilities, the Fundamental Purchaser Representations, ARTICLE IX (Tax Matters) or to any claim under Section 12.3 (Specific Performance), provided that any such excluded indemnifiable Losses shall not be deemed to count against or otherwise reduce such limitation on such Purchaser’s aggregate liability, and provided, further, that, except with respect to fraud or willful misconduct committed by Purchaser or its Related Persons, all claims for indemnification pursuant to such sections shall not, under any circumstances, in the aggregate, exceed the Purchase Price.
		3. Effect of Investigation. A Purchaser Indemnified Party’s right to indemnification, payment, reimbursement or any other remedy based upon any representation, warranty, covenant, agreement or obligation contained in this Agreement shall not be limited, diminished or otherwise affected by any investigation conducted with respect to, or any knowledge acquired at any time, whether before or after the Closing and regardless of whether such knowledge came from Purchaser, Seller, their respective Representatives, or any other Person, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant, agreement or obligation.
	1. Indemnification in Case of Certain Liability

. THE INDEMNIFICATION PROVISIONS IN THIS ARTICLE VIII AND ARTICLE IX SHALL BE ENFORCEABLE REGARDLESS OF WHETHER THE LIABILITY IS BASED ON PAST, PRESENT OR FUTURE ACTS, CLAIMS OR LAWS (INCLUDING ANY PAST, PRESENT OR FUTURE ENVIRONMENTAL LAW, FRAUDULENT TRANSFER ACT, OCCUPATIONAL SAFETY AND HEALTH LAW OR PRODUCTS LIABILITY, SECURITIES OR OTHER LAW), AND REGARDLESS OF WHETHER ANY PERSON (INCLUDING THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT) ALLEGES OR PROVES SOLE, JOINT, OR CONCURRENT STRICT LIABILITY IMPOSED ON THE PERSON SEEKING INDEMNIFICATION.

* 1. Determination of Losses

. For purposes of this ARTICLE VIII and ARTICLE IX, the amount of Losses arising out of any inaccuracy in or breach of any representations or warranties or any breach or default in performance of any covenant, obligation or agreement of Seller or Purchaser in ARTICLE III, ARTICLE IV or ARTICLE IX shall be calculated as if the terms “material” and “Material Adverse Effect” (and variations thereof) were omitted from such representations, warranties, covenants, obligations or agreements; provided that, and for the avoidance of doubt, such qualifiers shall be taken into account initially in determining whether a breach of any representations, warranties, covenants, obligations or agreements of Seller or Purchaser has occurred.

1. [[48]](#footnote-48)
TAX MATTERS
	1. Representations and Warranties

. Seller represents and warrants to Purchaser that, with respect to the Project Assets:

* + 1. All Tax Returns that were required to be filed with respect to the Project Assets have been timely filed, and such Tax Returns were prepared in compliance with applicable Law and were true, correct, and complete. All Taxes required to be paid with respect to the Project Assets (whether or not shown due on any Tax Returns) have been timely paid.
		2. There are no audits, claims, assessments, levies, administrative or judicial proceedings pending, or to Seller’s Knowledge, threatened, proposed or contemplated with respect to the Project Assets by any Taxing Authority.
		3. True, correct and complete copies of all sales and use and property Tax Returns relating to the Project Assets for taxable years for the preceding five (5) years have been made available to Purchaser.
		4. There is no extension or waiver of the application of any statute of limitations of any jurisdiction regarding the assessment or collection of any Tax with respect to the Project Assets.
		5. Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, member or other third party.
		6. No written claim has ever been made by a Taxing Authority in a jurisdiction where a Tax Return is not filed by, or with respect to, Seller or the Project Assets, that Seller (with respect to the Project Assets) or any of the Project Assets is or may be subject to Tax in that jurisdiction.
		7. The transactions contemplated in this Agreement will not have an adverse effect on the continuing validity and effectiveness of any Tax exemption, Tax holiday, Tax credit, Tax incentive or similar arrangement or benefit for which the Project Assets are currently eligible.
		8. No power of attorney is currently in effect, and no Tax ruling has been requested of any Governmental Authority with respect to any Tax matter, relating to the Project Assets.
		9. Seller (or if Seller is a disregarded entity, the person treated as owning Seller’s assets for income Tax purposes) is not a foreign person as defined in Section 1445(f)(3) of the Code
		10. None of the Project[, any Facility in the Project,][[49]](#footnote-49) or any other property that is part of the Project has been Placed In Service and there has been no “original use” (within the meaning of Section 48 of the Code) of the Project or any property that is part of the Project.
		11. None of the property in the Project, including the Purchased Assets, is “tax-exempt bond financed property” or “tax-exempt use property” within the meaning of Section 168 of the Code, or imported property of the kind described in Section 168(g)(6) of the Code. No election under Section 168(g)(7) of the Code has been made with respect to any part of the Project, including the Purchased Assets. The Project, including the Purchased Assets, is located in its entirety in the United States.
		12. Neither Seller nor any Affiliate of Seller has taken, nor does Seller or any Affiliate of Seller intend to take, a position on any Tax Return that is inconsistent with the Project, including the Project Assets, being Placed In Service by Purchaser and the “original use” (within the meaning of Section 48 of the Code) of the Project and any property that is part of the Project, including the Project Assets, commencing with Purchaser. Neither Seller nor any Affiliate of Seller has claimed, nor does Seller or any Affiliate of Seller intend to claim, on any Tax Return any depreciation or amortization deductions, ITCs, PTCs, or any other tax credits or deductions that are available with respect to ownership or operation of the Project or any property that is part of the Project, including the Project Assets.
		13. To Seller’s Knowledge, the Project is capable of qualifying for the [ITC and PTC],[[50]](#footnote-50) and no facts or circumstances exist that reasonably could be expected to hinder, impair, restrict, limit or disqualify the Project from qualifying for [the ITC and PTC].[[51]](#footnote-51) No portion of the Project, including the Project Assets, has benefited from the proceeds of any federal or state grant or rebate program that would cause a reduction in the amount of [the ITC or PTC],[[52]](#footnote-52) and no application with respect to any such grant or rebate has been filed or submitted.
		14. [No portion of the Project is or has been financed with, and neither the Seller nor any Affiliate of Seller has benefited from: (a) a grant provided by the United States, a state, a political subdivision of a state or any other Governmental Authority; (b) proceeds of an issue of state or local government obligations, the interest on which is exempt from tax under Section 103 of the Code; or (c) any subsidized energy financing provided (directly or indirectly) under a federal, state, or local program provided in connection with the Project (in each case, within the meaning of Section 45(b)(3) of the Code).][[53]](#footnote-53)
		15. No portion of the tax basis of any Project Assets acquired pursuant to this Agreement is or will be attributable to “qualified rehabilitation expenditures” within the meaning of Section 47(c)(2)(A) of the Code.
		16. For purposes of the Begin Construction Guidance, construction of the Project[, any Facility in the Project,][[54]](#footnote-54) and any other property that is part of the Project, including the Project Assets, began in [\_\_\_\_\_],[[55]](#footnote-55) and neither the Physical Work Test nor the Five Percent Safe Harbor (as such terms are defined in the Begin Construction Guidance) were satisfied in any earlier year with respect to the Project[, any Facility in the Project,][[56]](#footnote-56) and any other property that is part of the Project, including the Project Assets.[[57]](#footnote-57) The Project, including the Purchased Assets, will be Placed In Service in [\_\_\_\_][[58]](#footnote-58) (or, if earlier, the last date on which the Continuity Safe Harbor (as such term is defined in the Begin Construction Guidance) would be satisfied), and no facts or circumstances exist that reasonably could be expected to hinder, impair, restrict, limit or disqualify the Project, including the Purchased Assets, from being Placed In Service in such timeframe. The factual certifications contained in Schedule 9.1 are accurate as to all efforts to begin construction with respect to the Project, including the Purchased Assets, pursuant to the Begin Construction Guidance.
	1. Transfer Taxes

. Seller shall be responsible for any sales, use, value added, gross receipts, excise, registration, stamp duty, transfer or other similar Taxes or governmental fees (including any interest or penalties related thereto) that may be payable with respect to the transfer of the Project Assets pursuant to this Agreement (“Transfer Taxes”). Seller shall file all Tax Returns with respect to any Transfer Taxes and shall timely pay such Transfer Taxes. The Parties shall cooperate to comply with all Tax Return requirements for any and all Transfer Taxes and shall use commercially reasonable efforts to minimize the amount of any Transfer Taxes.

* 1. Seller’s Tax Indemnification

. Seller shall indemnify and hold harmless Purchaser from and against (a) any and all Seller Income Taxes, (b) any and all Taxes (other than Seller Income Taxes) imposed on or with respect to the Project Assets or Seller attributable to any Pre-Closing Tax Period (“Pre-Closing Taxes”), and (c) any Taxes arising from a breach by Seller of its representations, warranties and covenants in this ARTICLE IX. Taxes for an Overlap Period shall be allocated to the Pre-Closing Tax Period (i) ratably based on the number of days in the Straddle Period that are in the Pre-Closing Tax Period if they are imposed on a periodic basis and (ii) based on an interim closing of the books if they are based upon or related to income or receipts. For the avoidance of doubt, the limitations of liability contained in ARTICLE VIII shall not apply with respect to any indemnification claim under this Section 9.3.

* 1. Cooperation. After the Closing Date, Seller and Purchaser shall (and shall cause their respective Affiliates to): (a) assist the other Party in preparing any Tax Returns which such other Party is responsible for preparing and filing in accordance with the terms of this Agreement, (b) cooperate fully in preparing for any audits of, or disputes with any Taxing Authority regarding, any Tax Returns of Seller with respect to the Project Assets and (c) make available to each other as reasonably requested all information, records or documents relating to liability or potential liability for Pre-Closing Taxes, Overlap Period Taxes and Transfer Taxes and will preserve such information, records or documents until thirty (30) days after the expiration of the applicable statute of limitations (including extensions or waivers thereof) with respect to the particular Tax to which the information, records or documents relate.
	2. Covenants. Neither Seller nor any Affiliate of Seller will engage in any action or fail to take any action that it knows or reasonably should know would adversely affect the eligibility of the Project for, or the receipt by Purchaser or any of its Affiliates of, [the ITC, PTC, or other applicable tax incentive],[[59]](#footnote-59) including the ability of the Project to be Placed In Service in [\_\_\_\_][[60]](#footnote-60) (or, if earlier, the last date on which the Continuity Safe Harbor (as such term is defined in the Begin Construction Guidance) would be satisfied). Neither Seller nor any Affiliate of Seller will take a position on any Tax Return that is inconsistent with the Project being Placed In Service by Purchaser and the “original use” (within the meaning of Section 48 of the Code) of the Project and any property that is part of the Project, including the Purchased Assets, commencing with Purchaser. Neither Seller nor any Affiliate of Seller will claim on any Tax Return any depreciation or amortization deductions, ITCs, PTCs, or any other tax credits or deductions that are available with respect to ownership or operation of the Project or any property that is part of the Project, including the Purchased Assets.
	3. Survival of Obligations

. The representations, warranties and obligations of the Parties set forth in this ARTICLE IX shall remain in effect until ninety (90) days after expiration of the applicable statutes of limitation (giving effect to any extensions or waivers thereof) relating to the Tax or Tax Return in question.

* 1. Adjustments to Purchase Price

. The Parties hereby agree that any and all indemnity payments made pursuant to this Agreement shall, to the maximum extent permitted by applicable Law, be treated for all Tax purposes as an adjustment to the Purchase Price.

1. SURVIVAL Periods; NO OTHER REPRESENTATIONS
	1. Survival of Representations, Warranties, Covenants and Agreements

. All representations and warranties contained in this Agreement shall survive, and thus a claim may be brought in respect of a breach thereof, until the day that is twenty-four (24) months after the Closing Date (the “Expiration Date”); provided, however, that: (a) the Fundamental Seller Representations and the Fundamental Purchaser Representations shall survive indefinitely after the Closing Date; (b) the representations and warranties contained in Section 3.18 (Environmental Matters) shall survive until the day that is five (5) years after the Closing Date; and (c) the representations and warranties in Section 9.1 (Taxes) and Section 3.19 (Employee and Employee Benefits Matters) shall survive until the day that is sixty (60) days after the expiration of the applicable statute of limitations (giving effect to any extensions or waivers thereof)

. The covenants and agreements contained in this Agreement shall survive, and thus a claim may be brought in respect of a breach thereof, until the day that is twenty-four (24) months following the last day of the applicable period for which such covenant or agreement is required to be performed or, if no such period is set forth herein, until the day that is twenty-four (24) months following the last day such covenant or agreement is fully performed; provided, however, that the covenants and agreements contained in: (x) Section 2.1.2 (Assignment and Assumption of Project Contracts), Section 2.1.4(a) (Excluded Liabilities), Section 2.1.4(b) (Assumed Liabilities), ARTICLE X (Survival Periods, No Other Representations), ARTICLE XI (Dispute Resolution) and ARTICLE XII (Limited Remedies and Damages), shall survive indefinitely after the Closing Date; (y) ARTICLE IX (Tax Matters) and Section 13.6 (Confidentiality) shall be governed solely by the terms therein; and (z) ARTICLE VIII shall survive the Closing in accordance with its terms.

* 1. No Other Representations

.

10.2.1 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IT IS THE EXPLICIT INTENT OF EACH PARTY HERETO, AND THE PARTIES HEREBY AGREE, THAT NONE OF THE PARTIES OR ANY OF THEIR AFFILIATES OR REPRESENTATIVES HAS MADE OR IS MAKING ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY IMPLIED REPRESENTATION OR WARRANTY INCLUDING AS TO THE CONDITION, MERCHANTABILITY, VALUE, QUALITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, APPARENT OR LATENT DEFECTS OF ANY TYPE, OR RISKS OR OTHER INCIDENTS OF THE BUSINESS, THE PROJECT, THE PROJECT SITE, THE PROJECT ASSETS, THE ASSUMED LIABILITIES OR ANY PART THEREOF, EXCEPT THOSE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III, ARTICLE IV AND ARTICLE IX, AS APPLICABLE TO A PARTY. IN PARTICULAR, AND WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER MAKES NO REPRESENTATION OR WARRANTY TO PURCHASER WITH RESPECT TO THE PROSPECTS, ANY FINANCIAL PROJECTIONS OR FORECASTS RELATING TO THE PURCHASED ASSETS; PROVIDED, THAT THIS SENTENCE SHALL NOT LIMIT THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER CONTAINED IN ARTICLE III AND ARTICLE IX.

10.2.2 EXCEPT FOR THOSE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III AND ARTICLE IX, THE PURCHASED ASSETS ARE BEING TRANSFERRED “AS IS, WHERE IS, WITH ALL FAULTS.”

10.2.3 Notwithstanding anything to the contrary contained in this Agreement, and except in connection with the Seller’s Parent Guaranty or the Purchaser Security Agreements, no Related Person of Seller will have any personal liability to Purchaser or any other Person as a result of this Agreement or the breach of any representation, warranty, covenant, agreement or obligation of Seller contained in this Agreement, and no Related Person of Purchaser will have any personal liability to Seller or any other Person as a result of this Agreement or the breach of any representation, warranty, covenant, agreement or obligation of Purchaser contained in this Agreement.

1. DISPUTE RESOLUTION
	1. Dispute Resolution

. Any dispute or claim arising under this Agreement which is not resolved in the ordinary course of business shall be referred to a panel consisting of a senior executive (President or a Vice President) of Purchaser and Seller, with authority to decide or resolve the matter in dispute, for review and resolution. Such senior executives shall meet and in good faith attempt to resolve the dispute within thirty (30) days. If the Parties are unable to resolve a dispute pursuant to this Section 11.1, then any Party may exercise any right or remedy available under this Agreement or applicable Law.

* 1. Governing Law

. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, ENFORCED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

* 1. Venue

. Each of the Parties hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and state courts located in Salt Lake City, Utah (or if no such court will accept jurisdiction, in any state or federal court of general jurisdiction in the State of Utah, or if no such court will accept jurisdiction, in any court of competent jurisdiction in the United States) with respect to any proceeding relating to this Agreement. Further, each of the Parties hereby irrevocably and unconditionally waives any objection or defense that it may have based on improper venue or forum *non conveniens* to the conduct of any such proceeding in any such courts. The Parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum. Each of the Parties (on behalf of itself and its Affiliates) agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

* 1. Waiver of Trial by Jury

. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH 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.

1. LIMITED REMEDIES AND DAMAGES
	1. Exclusive Remedies

. EXCEPT FOR CLAIMS ARISING UNDER ARTICLE II RELATED TO PURCHASE PRICE ADJUSTMENTS, AND CLAIMS FOR FRAUD OR WILLFUL MISCONDUCT WITH RESPECT TO A PARTY IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE EXPRESS REMEDIES SET FORTH IN SECTION 6.3, SECTION 7.2 AND IN SECTION 12.3, AND THE INDEMNITIES SET FORTH IN ARTICLE VIII AND ARTICLE IX, ARE THE SOLE AND EXCLUSIVE REMEDIES FOR A PARTY UNDER OR RELATING TO THIS AGREEMENT, WHETHER BASED ON STATUTE, IN TORT, COMMON LAW, STRICT LIABILITY, CONTRACT OR OTHERWISE, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE HEREBY WAIVED BY EACH PARTY. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS ARTICLE XII SHALL LIMIT ANY PERSON’S RIGHT TO SEEK AND OBTAIN ANY EQUITABLE RELIEF TO WHICH ANY PERSON SHALL BE ENTITLED, OR TO SEEK ANY REMEDY ON ACCOUNT OF ANY PERSON’S FRAUDULENT, CRIMINAL OR WILLFUL MISCONDUCT, OR ANY PERSON’S RIGHT TO SEEK AND OBTAIN EQUITABLE OR MONETARY RELIEF PRIOR TO CLOSING.

* 1. Limitation of Liability

. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NO PARTY SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, LOST PROFITS OR LOSS OF REVENUE, WHETHER BY STATUTE, IN TORT, COMMON LAW, STRICT LIABILITY OR CONTRACT OR OTHERWISE. THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES SHALL BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT OF ANY PARTY, AND WHETHER LIABILITY IS BASED ON CONTRACT, TORT, STATUTE, COMMON LAW, STRICT LIABILITY OR OTHERWISE (“NON-REIMBURSABLE DAMAGES”); PROVIDED, HOWEVER, THAT A PARTY SHALL BE LIABLE FOR, AND NON-REIMBURSABLE DAMAGES SHALL NOT INCLUDE, (A) ALL SUCH DAMAGES ARISING FROM THIRD PARTY CLAIMS FOR WHICH AN INDEMNIFIED PARTY SEEKS INDEMNIFICATION AND (B) ANY LIQUIDATED DAMAGES PROVIDED FOR IN SECTION 6.3. THIS PROVISION SHALL SURVIVE ANY TERMINATION, CANCELLATION OR SUSPENSION OF THIS AGREEMENT.

* 1. Specific Performance

. EACH PARTY AGREES THAT DAMAGE REMEDIES SET FORTH IN THIS AGREEMENT MAY BE DIFFICULT OR IMPOSSIBLE TO CALCULATE OR OTHERWISE INADEQUATE TO PROTECT ITS INTERESTS AND THAT IRREPARABLE DAMAGE MAY OCCUR IN THE EVENT THAT PROVISIONS OF THIS AGREEMENT ARE NOT PERFORMED BY THE PARTIES IN ACCORDANCE WITH THE SPECIFIC TERMS OF THIS AGREEMENT. ANY PARTY MAY SEEK TO REQUIRE THE PERFORMANCE OF ANY OTHER PARTY’S OBLIGATIONS UNDER THIS AGREEMENT THROUGH AN ORDER OF SPECIFIC PERFORMANCE RENDERED BY THE FEDERAL COURT IN THE STATE OF UTAH OR THE STATE COURTS IN THE STATE OF UTAH AS PROVIDED IN SECTION 11.2.

1. MISCELLANEOUS
	1. Notices

.

* + 1. Notice Addresses. Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by fax, by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to a Party at its address specified below:

If to Purchaser, to:

PacifiCorp d/b/a Rocky Mountain Power

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

with a copy to:

PacifiCorp d/b/a Rocky Mountain Power

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

If to Seller, to:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

with a copy to:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

* + 1. Effective Time. Notice given by personal delivery, mail or overnight courier pursuant to this Section 13.1.2 shall be effective upon physical receipt. Notice given by fax pursuant to this Section 13.1.2 shall be effective as of (a) the date of confirmed delivery if delivered before 5:00 p.m. local time on any Business Day, or (b) the next succeeding Business Day if confirmed delivery is after 5:00 p.m. local time on any Business Day or during any non-Business Day.
	1. Payments

. Except for payments due at Closing, including the Closing Payment, if a Party is required to make any payment under this Agreement on a day other than a Business Day, the date of payment shall be extended to the next Business Day. In the event a Party does not make any payment required or approved by the Parties under this Agreement on or before the due date, interest on the unpaid amount shall be due and paid at the Default Rate from the date such payment is due until the date such payment is made in full. Any payment of such interest at the Default Rate pursuant to this Agreement shall not excuse or cure any default hereunder. All payments shall first be applied to the payment of accrued but unpaid interest.

* 1. Entire Agreement

. This Agreement, the Ancillary Agreements and the Confidentiality Agreement, including, in each case, all schedules and exhibits thereto, supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof, and contain the sole and entire agreement between the Parties hereto with respect to the subject matter hereof and thereof.

* 1. Expenses

. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are completed, each Party will pay its own costs and expenses incurred in connection with the negotiation, execution and performance under this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby.

* 1. Public Announcements

. Seller and Purchaser will not issue or make any press releases or similar public announcements concerning the transactions contemplated hereby without the written consent of the other Party. If a Party is unable to obtain the approval of its press release or similar public statement from the other Party and such press release or similar public statement is, in the opinion of legal counsel to such Party, required by Law in order to discharge such Party’s disclosure obligations, then such Party may make or issue the legally required press release or similar public statement and promptly furnish the other Party with a copy thereof. Seller and Purchaser will also obtain the other Parties’ prior written approval of any press release to be issued immediately following the execution of this Agreement or the Closing announcing either the execution of this Agreement or the completion of the transactions contemplated by this Agreement.

* 1. Confidentiality

. Each of Purchaser and Seller hereby agree that it shall be bound in all respects by the Confidentiality Agreement. The Confidentiality Agreement shall continue to be in full force and effect for the term set forth therein notwithstanding the execution and delivery of this Agreement or the occurrence of the Closing, except that following the Closing the Confidentiality Agreement shall not apply to information concerning any of the Project Assets which is available to Purchaser as owner of the Project Assets after the Closing.

* 1. Waivers

.

* + 1. Grant of Waivers. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.
		2. Exercise of Remedies. No failure or delay of any Party, in any one or more instances, (a) in exercising any power, right or remedy (other than failure or unreasonable delay in giving notice of default) under this Agreement or (b) in insisting upon the strict performance by the other Party of such other Party’s covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. Subject to Section 10.1, the covenants, obligations and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.
	1. Amendment

. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the Parties.

* 1. No Construction Against Drafting Party

. The language used in this Agreement is the product of the Parties’ efforts and each Party hereby irrevocably waives the benefits of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific words in a contract.

* 1. No Third Party Beneficiary

. The terms and provisions of this Agreement are intended solely for the benefit of each Party hereto and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person; provided that, Seller Indemnified Parties and Purchaser Indemnified Parties shall be third-party beneficiaries of this Agreement solely with respect to their rights to seek indemnification pursuant to Article VIII.

* 1. Headings

. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

* 1. Invalid Provisions

. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) Purchaser and Seller shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

* 1. Assignment

.

13.13.1 In General. Except as set forth in this Section 13.13, neither this Agreement nor any of the rights or obligations hereunder shall be assigned by either Party, including by operation of Law, without the prior written consent of the other Party. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void.

13.13.2 Purchaser Assignment. Purchaser may, without the consent of Seller, assign this Agreement, or assign or delegate its rights and obligations under this Agreement, in whole or in part, if such assignment or delegation is made to: (a) any successor to Purchaser where such assignment does not occur by operation of Law; (b) a Person (other than a natural person) providing wholesale or retail electric service in Utah; or (c) a Person (other than a natural person) as otherwise required by Law and, in each case, such assignee or delegatee enters into an assignment and assumption agreement, in form and substance satisfactory to Seller, pursuant to which such assignee or delagatee assumes all of Purchaser’s obligations hereunder and otherwise agrees to be bound by the terms of this Agreement. Purchaser shall provide Seller with written notice of any such assignment.

13.13.3 Seller Assignment. Seller may, without the consent of Purchaser (and without relieving itself from liability hereunder), transfer or assign this Agreement, or assign or delegate its rights and obligations under this Agreement, in whole or in part, if such assignment or delegation is made to: (a) an Affiliate of Seller, provided the Seller’s Parent Guaranty and each of the Purchaser Security Agreements remains in full force and effect in accordance with its terms and without change due to such transfer or assignment (or, in the case of the Purchaser Security Agreement, to the extent necessary because of such assignment or delegation, the Purchaser Security Agreements are amended and restated in form and substance satisfactory to Purchaser in its sole discretion); and (b) such Affiliate enters into an assignment and assumption agreement, in form and substance satisfactory to Purchaser, pursuant to which such Affiliate assumes all of Seller’s obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.

13.13.4 Liability After Assignment. A Party’s assignment or transfer of rights or obligations pursuant to this Section 13.13 (other than Section 13.13.3) shall relieve said Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment, provided such transferee enters into an assignment and assumption agreement, in form and substance satisfactory to the other Party, pursuant to which such transferee assumes all of the assigning or transferring Party’s obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.

* 1. Counterparts

. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile transmission, by email in “portable document format” (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

* 1. Time of Essence

. Time is of the essence with respect to all obligations of the Parties hereunder.

13.16 No Partnership or Joint Venture

. The Parties do not intend to create a partnership or joint venture by virtue of this Agreement. Neither Party will owe any fiduciary duty to the other Party by virtue of this Agreement or any other document or Contract contemplated hereby.

**[**Signature page follows.**]**

**IN WITNESS WHEREOF**, this Agreement has been executed by the Parties as of the Execution Date.

**SELLER:**

**[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_],**

**a [State] [entity type]**

By:

Name:

Title:

**PURCHASER:**

**PacifiCorp d/b/a Rocky Mountain Power**

**An Oregon corporation**

By:

Name:

Title:

Exhibit A

Form of Seller’s Parent Guaranty

[To be provided by Purchaser]

Exhibit B

Form of Bill of Sale

[To be provided by Purchaser]

Exhibit C

Forms of Assignment and Assumption Agreements

[To be provided by Purchaser]

Exhibit D

[Form of Bargain and Sale Deed]

[To be provided by Purchaser]

Exhibit E

Form of EPC Agreement[[61]](#footnote-61)

See attached

Exhibit F

Form of Construction Completion Agreement[[62]](#footnote-62)[[63]](#footnote-63)

 See attached

Exhibit G

Form of O&M Agreement[[64]](#footnote-64)[[65]](#footnote-65)

See attached

[Exhibit H

Form of Turbine Supply Agreement[[66]](#footnote-66)

See attached][[67]](#footnote-67)

[Exhibit I

Form of Service and Maintenance Agreement[[68]](#footnote-68)

See attached][[69]](#footnote-69)

Exhibit J

Form of Security Agreement

[To be provided by Purchaser]

Exhibit K

Form of Deed of Trust

[To be provided by Purchaser]

Exhibit L

Form of Pledge Agreement

[To be provided by Purchaser]

Exhibit M-1

Form of Oil and Gas Accommodation Agreement

Exhibit M-2

Form of Mineral Accommodation Agreement

1. NTD: To be deleted if replaced with alternative form of security acceptable to Purchaser in its sole discretion. [↑](#footnote-ref-1)
2. NTD: To be deleted if the Project Site is not owned in fee by Seller, with applicable conforming changes to be made throughout this Agreement. [↑](#footnote-ref-2)
3. NTD: For wind Projects only. [↑](#footnote-ref-3)
4. NTD: Project Contracts shall include the Construction Agreements. [↑](#footnote-ref-4)
5. NTD: To be provided by Purchaser. [↑](#footnote-ref-5)
6. NTD: To be provided by Purchaser. [↑](#footnote-ref-6)
7. NTD: For solar Projects only. [↑](#footnote-ref-7)
8. NTD: For wind Projects only [↑](#footnote-ref-8)
9. NTD: This Agreement has been prepared to accommodate solar and wind Projects. Conforming changes will be required to accommodate geothermal Projects. [↑](#footnote-ref-9)
10. NTD: To be deleted if the Project Site is not owned in fee by Seller, with applicable conforming changes to be made throughout this Agreement. [↑](#footnote-ref-10)
11. NTD: To be updated to reflect changes pursuant to tax reform/extenders. [↑](#footnote-ref-11)
12. NTD: Closing Completion will be defined in greater detail in the EPC Agreement but shall be a milestone occurring before mechanical completion at which time material physical work with respect to the Facility remains outstanding. [↑](#footnote-ref-12)
13. NTD: To be provided by Purchaser consistent with the RFP requirements. [↑](#footnote-ref-13)
14. NTD: For solar Projects only. [↑](#footnote-ref-14)
15. NTD: For wind Projects only. [↑](#footnote-ref-15)
16. NTD: For solar Projects only. [↑](#footnote-ref-16)
17. NTD: For wind Projects only. [↑](#footnote-ref-17)
18. NTD: For wind Projects only. [↑](#footnote-ref-18)
19. NTD: For wind Projects only. [↑](#footnote-ref-19)
20. NTD: For solar Projects only. [↑](#footnote-ref-20)
21. NTD: For wind Projects only. [↑](#footnote-ref-21)
22. NTD: For solar Projects only. [↑](#footnote-ref-22)
23. NTD: For wind Projects only. [↑](#footnote-ref-23)
24. NTD: For solar Projects only. [↑](#footnote-ref-24)
25. NTD: For wind Projects only. [↑](#footnote-ref-25)
26. NTD: For solar Projects only. [↑](#footnote-ref-26)
27. NTD: For wind Projects only. [↑](#footnote-ref-27)
28. NTD: For wind Projects only. [↑](#footnote-ref-28)
29. NTD: All references to HSR Act in this Agreement shall apply, only if applicable. [↑](#footnote-ref-29)
30. NTD: Purchaser to provide additional Objectionable Title and Survey Matters Required to be Cured based on facts and circumstances of the Project Site and Project Real Property Documents. [↑](#footnote-ref-30)
31. NTD: For solar Projects only. [↑](#footnote-ref-31)
32. NTD: For wind Projects only. [↑](#footnote-ref-32)
33. NTD: Seller’s Parent Guarantor to be provided by Seller and acceptable to Purchaser. [↑](#footnote-ref-33)
34. NTD: For wind Projects only [↑](#footnote-ref-34)
35. NTD Purchaser to identify Title Company. [↑](#footnote-ref-35)
36. NTD: For wind Projects only. [↑](#footnote-ref-36)
37. NTD: To be deleted if not applicable. [↑](#footnote-ref-37)
38. NTD: To be deleted if not applicable. [↑](#footnote-ref-38)
39. NTD: To be included only if required. [↑](#footnote-ref-39)
40. NTD: Any additional studies and reports to be determined. [↑](#footnote-ref-40)
41. NTD – To be revised and conformed to reflect specific employee and employee benefits matters applicable to Seller. [↑](#footnote-ref-41)
42. NTD – If any portion of the Project Site or Easements are located on federal land, a CFedS will be necessary. [↑](#footnote-ref-42)
43. NTD: For wind Projects only. [↑](#footnote-ref-43)
44. NTD: Seller to provide. [↑](#footnote-ref-44)
45. NTD: For wind Projects only. [↑](#footnote-ref-45)
46. NTD: Purchaser to provide the Outside Date consistent with the RFP. [↑](#footnote-ref-46)
47. NTD: Purchaser to provide the Reports Cut-Off Date. [↑](#footnote-ref-47)
48. NTD: The tax provisions in this Agreement remain subject to further change based on input from PacifiCorp’s tax advisors. [↑](#footnote-ref-48)
49. NTD: For wind Projects only. [↑](#footnote-ref-49)
50. NTD: Modify as applicable for solar and wind Projects. [↑](#footnote-ref-50)
51. NTD: Modify as applicable for solar and wind Projects. [↑](#footnote-ref-51)
52. NTD: Modify as applicable for solar and wind Projects. [↑](#footnote-ref-52)
53. NTD: For wind Projects only. [↑](#footnote-ref-53)
54. NTD: For wind Projects only. [↑](#footnote-ref-54)
55. NTD: Seller to provide. [↑](#footnote-ref-55)
56. NTD: For wind Projects only. [↑](#footnote-ref-56)
57. NTD: Modifications may be required based on future “begin construction” guidance for solar and wind projects. [↑](#footnote-ref-57)
58. NTD: Seller to provide the calendar year that is no more than four calendar years after the calendar year during which construction of the Project began. [↑](#footnote-ref-58)
59. NTD: To be modified as relevant for the particular Project. [↑](#footnote-ref-59)
60. NTD: Seller to provide the calendar year that is no more than four calendar years after the calendar year during which construction of the Project began. [↑](#footnote-ref-60)
61. NTD: The version of the term sheet to be attached to be based on the type of the Project. [↑](#footnote-ref-61)
62. NTD: The version of the term sheet to be attached to be based on the type of the Project. [↑](#footnote-ref-62)
63. NTD: The form of Construction Completion Agreement shall be attached to this Agreement prior to the Execution Date and replace the term sheet attached hereto. The form of Construction Completion Agreement shall be substantially and in all material respects consistent with the term sheet attached hereto and otherwise in form and substance satisfactory to Purchaser. [↑](#footnote-ref-63)
64. NTD: The version of the term sheet to be attached to be based on the type of the Project. [↑](#footnote-ref-64)
65. NTD: The form of O&M Agreement shall be attached to this Agreement prior to the Execution Date and replace the term sheet attached hereto. The form of O&M Agreement shall be substantially and in all material respects consistent with the term sheet attached hereto and otherwise in form and substance satisfactory to Purchaser. [↑](#footnote-ref-65)
66. NTD: The form of Turbine Supply Agreement shall be attached to this Agreement prior to the Execution Date and replace the term sheet attached hereto. The form of Turbine Supply Agreement shall be substantially and in all material respects consistent with the term sheet attached hereto and otherwise in form and substance satisfactory to Purchaser. [↑](#footnote-ref-66)
67. NTD: For wind Projects only. [↑](#footnote-ref-67)
68. NTD: The form of Service and Maintenance Agreement shall be attached to this Agreement prior to the Execution Date and replace the term sheet attached hereto. The form of Service and Maintenance Agreement shall be substantially and in all material respects consistent with the term sheet attached hereto and otherwise in form and substance satisfactory to Purchaser. [↑](#footnote-ref-68)
69. NTD: For wind Projects only. [↑](#footnote-ref-69)