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NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

SUSAN BITTER SMITH - CHAIRMAN
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

DOCKETED BY

AUG 31 2015

2015 AUG 31 P 4: 26

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
UNS ELECTRIC, INC. FOR APPROVAL OF A
POWER PURCHASE AGREEMENT WITH
LS-CLIFFROSE, LLC

DOCKET NO. E-04204A-15-0314

APPLICATION

UNS Electric, Inc. ("UNS Electric"), through undersigned counsel, and in compliance with Decision No. 52345 (July 27, 1981), hereby submits its Application ("Application") for Arizona Corporation Commission ("Commission") approval of a solar project power purchase agreement ("Agreement") with LS-Cliffrose, LLC ("Cliffrose"). Under the Agreement, UNS Electric will purchase the entire output of energy from a PURPA¹ Qualifying Facility owned by Cliffrose.

Cliffrose is a special purpose entity formed to develop, design, construct, own (or lease) and operate a photovoltaic ("PV") renewable energy generating facility ("Facility") in Mohave County, Arizona (or such other county within the State of Arizona as mutually agreed by UNS Electric and Cliffrose). The Facility will be located within the Company's certificated service territory. Cliffrose has requested to interconnect the Facility to UNS Electric's 69 kV transmission system as a PURPA Qualifying Facility, with a capacity up to 75 MW AC.

I. Regulatory Background

In 1978, the United States Congress enacted PUPRA to encourage the conservation of electric energy and natural gas as part of a broad response to the global energy crisis of the 1970's. Section 210 of PURPA accomplishes this goal by promoting the development of alternative energy resources through the establishment of a class of generating facilities, known as "Qualifying Facilities" or "QFs", which receive by law special rate and regulatory treatment. Under PURPA, the Federal Energy Regulatory Commission ("FERC") was authorized to develop rules requiring electric utilities to both purchase electricity from and sell electricity to Qualifying

¹ Public Utilities Regulatory Policies Act of 1978 as amended by the Energy Policy Act of 2005.

1 Facilities. FERC subsequently issued regulations requiring that the rates for purchases from a
2 Qualifying Facility must be just and reasonable to the ratepayers of the utility, in the public
3 interest, and must not discriminate against cogeneration or small power producers. Additionally,
4 purchase rates must be based on the utility's "avoided cost," which is generically defined as the
5 incremental energy and capacity costs the utility would otherwise incur if not for the energy
6 purchased from the Qualifying Facility.²

7 PURPA required state regulatory authorities to implement FERC rules for the
8 encouragement of cogeneration and small power production and required rates for purchases from
9 a Qualifying Facility to be just and reasonable to the ratepayers of the utility, in the public
10 interest, non-discriminatory, and not in excess of the electric utility's "avoided cost" as set by the
11 appropriate state regulatory authority. In response to this obligation, on July 27, 1981, the
12 Commission adopted the Cogeneration and Small Power Production Policy (Decision No. 52345)
13 which encourages the development of cogeneration and small power production in order to
14 promote equity, efficiency, and conservation with regards to the production and sale of electricity
15 in Arizona and requires that contracts with a Qualifying Facility over 100 kW be submitted to the
16 Commission for review and approval ("Policy"), and that the rates would generally be based on
17 the utility's avoided cost.

18 As part of the Commission's Cogeneration and Small Power Production Policy, two
19 classes of Qualifying Facilities were created by the Policy: Qualifying Facilities with a capacity
20 rating of 100 kW and less, and Qualifying Facilities with a capacity rating of over 100 kW. No
21 specific rates or standard contracts were required for Qualifying Facilities over 100 kW, but the
22 Policy suggests that standard rates developed for Qualifying Facilities 100 kW and under are to
23 be used as the basis for development of rates for Qualifying Facilities over 100 kW. Commission
24 Decision No. 56271 (December 15, 1988) modified the Policy by requiring utilities to file
25 optional rates for standby, supplemental, and maintenance power needs of Qualifying Facilities
26 over 100 kW.

27 In 2005, Congress enacted the Energy Policy Act of 2005 ("2005 EPA"), which, among
28 other things, modified Section 210 of PURPA by eliminating the utility's obligation to purchase
Qualifying Facility power if the utility demonstrates that a Qualifying Facility can sell its power

² 18 CFR 292.204 (b)(6).

1 in a competitive wholesale market for energy and capacity. If such a demonstration cannot be
2 made, then the mandatory purchase provisions of PURPA continue. As with the earlier
3 legislation, FERC was tasked with developing regulations to implement the changes. The 2005
4 EPA did not require changes to the Commission's existing Policy.

5 **II. Description of a Qualifying Facility**

6 FERC has set forth certain criteria that must be met for a generating facility to be considered a
7 small power production Qualifying Facility:

- 8 1. The facility cannot be larger than 80 megawatts;³
- 9 2. The primary energy source of the facility must be biomass, waste, renewable resources,
10 geothermal resources, or any combination thereof, and 75 percent or more of the total
11 energy input must be from these sources⁴; and
- 12 3. The Facility must have filed a notice of self-certification with FERC.⁵

13 The Facility is expected to meet these requirements. The Generator capacity rating will be under
14 the threshold, the primary energy source will be renewable, and Cliffrose is expected to file a
15 notice of self-certification with FERC.

16 **III. Description of the Agreement**

17 On June 23, 2015, Cliffrose and UNS Electric entered into the Agreement (attached to this
18 filing as Exhibit 1). The Agreement provides for the sale and purchase of the full output of the
19 Facility through December 31, 2039, at the "Contract Price" for delivered power and milestones
20 set forth in the Agreement. The Contract Price is based on UNS Electric's avoided costs. The
21 Contract Price is just and reasonable to UNS Electric's ratepayers, is in the public interest and
22 does not discriminate against cogenerators or small power producers. In addition, the terms and
23 conditions required in the Commission's Policy for agreements with QFs are addressed in the
24 Agreement. Energy will be supplied to UNS Electric as generated by the Facility.

25
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27 ³ 18 CFR 292.204 (a).

28 ⁴ 18 CFR 292.203 (a).

⁵ 18 CFR 292.204 (b).

1 **IV. Commission Approval of the Agreement**

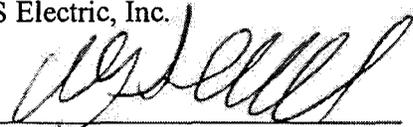
2 UNS Electric is requesting Commission approval of the Agreement pursuant to the
3 Policy. As set forth in Decision No. 52345 (July 27, 1981). If the Commission does not act
4 within thirty (30) days after receipt of the Agreement, approval of the contract is considered
5 granted.⁶

6 **V. Conclusion**

7 The Agreement complies with federal and Commission requirements both for the sale and
8 purchase from a PURPA Qualifying Facility, and UNS Electric hereby submits this application in
9 compliance with the Commission's Policy which requires that the Company request approval of
10 all contracts over 100 kW for the sale and/or purchase of energy between UNS Electric and the
11 Qualifying Facility. Therefore, UNS Electric respectfully requests the Commission to:

- 12 1. Find the Agreement is in compliance with all applicable requirements for a contract
13 between UNS Electric and a Qualifying Facility; and
14 2. Approve the Agreement in accordance with the Policy.

15
16 RESPECTFULLY SUBMITTED this 31st day of August, 2015.

17 UNS Electric, Inc.
18 By 
19 Bradley S. Carroll
20 UNS Electric, Inc.
21 88 E. Broadway Blvd - MS HQE 910
22 P.O. Box 711
23 Tucson, Arizona 85702

24 and
25 Michael W. Patten
26 SNELL & WILMER L.L.P.
27 One Arizona Center
28 400 East Van Buren Street, Suite 1900
 Phoenix, Arizona 85004

 Attorneys for UNS Electric, Inc.

⁶ Decision No. 52345, Cogeneration and Small Power Production Policy, Section V, Paragraphs B and C.

1 Original and thirteen copies of the foregoing
2 filed this 31st day of August, 2015, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered/mailed
8 this 31st day of August, 2015, to:

9 Dwight D. Nodes, Chief Administrative Law Judge
10 Hearing Division
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, Arizona 85007

14 Janice M. Alward, Chief Counsel
15 Legal Division
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Thomas M. Broderick, Director
20 Utilities Division
21 Arizona Corporation Commission
22 1200 West Washington Street
23 Phoenix, Arizona 85007

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27
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By: *Jaclyn Howard*

EXHIBIT 1

Agreement between UNS Electric, Inc.
and
LS-Cliffrose, LLC

Execution Copy

SOLAR PROJECT POWER PURCHASE AGREEMENT

Between

LS - Cliffrose, LLC

And

UNS Electric, Inc.

June 23, 2015

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Solar Project Power Purchase Agreement

This Solar Project Power Purchase Agreement (this "**Agreement**"), dated as of June 23, 2015 (the "**Execution Date**"), is entered into between UNS Electric, Inc., an Arizona corporation ("**Buyer**"), and LS - Cliffrose, LLC, a Delaware limited liability company ("**Seller**").

RECITALS

A. Buyer is a public service company subject to the jurisdiction of the Federal Energy Regulatory Commission ("**FERC**") and the Arizona Corporation Commission ("**ACC**"), and is subject to the Public Utilities Regulatory Policies Act of 1978 as amended by the Energy Policy Act of 2005 ("**PURPA**");

B. Seller desires to develop, design, construct, own (or lease) and operate a renewable electric generating Facility in Mohave County, Arizona (or such other county within the State of Arizona as mutually agreed by Buyer and Seller), which Facility will be a qualifying co-generator or small power production facility ("**QP**") under PURPA;

C. Seller has requested to interconnect the Facility to Buyer's 69 kV transmission system as a PURPA Qualifying Facility;

D. Seller wishes to sell, and Buyer wishes to buy, the full Delivered Power of the Facility.

In consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

ARTICLE ONE: GENERAL DEFINITIONS AND RULES OF INTERPRETATION

Capitalized terms used and not otherwise defined herein shall have the meanings set forth in Exhibit A, unless the context clearly requires otherwise. The Rules of Interpretation set forth in Exhibit A shall apply to the interpretation of this Agreement.

ARTICLE TWO: TERM AND TERMINATION; MILESTONES

2.1 Binding Nature. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under Articles One, Seven, Nine, Ten, Eleven and Twelve and Sections 2.1, 2.2, and 2.3. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon the occurrence of the Effective Date.

2.2 Buyer's Regulatory Approvals. Buyer shall submit this Agreement to the ACC for approval within thirty (30) days after the Execution Date. If Buyer's Regulatory Approvals have not been obtained on or before December 31, 2015, either party may terminate this Agreement by giving ten (10) days prior written notice to the other Part. Neither Party shall have any liability to the other with respect to such termination.

2.3 Conditions Precedent to Seller's Obligations. The following conditions (the "Seller Conditions Precedent") must be satisfied by the Condition Deadline:

- (a) Seller shall have obtained all Permits necessary for it to construct the Facility on terms acceptable to it;
- (b) Seller shall have obtained Site Control and all necessary agreements for the interconnection of the Facility to the Interconnecting Utility System, including execution of an Interconnection Agreement, each on terms acceptable to it; and
- (c) Seller shall have obtained a financing commitment for the construction of the Facility on terms acceptable to it.

Seller shall use reasonable efforts to achieve the satisfaction of the Seller Conditions Precedent by the Condition Deadline. At Seller's request and at Seller's cost and to the extent commercially reasonable, Buyer shall reasonably cooperate with Seller as may be necessary in order to assist Seller in achieving the satisfaction of the Seller Conditions Precedent. Either Party may terminate this Agreement if the Seller Conditions Precedent are not satisfied for any reason on or before the Condition Deadline. Termination of this Agreement pursuant to this Section 2.3 shall not trigger the default provisions contained in Article Ten, and neither Party shall have any liability to the other Party with respect to such termination.

2.4 Term. Seller's obligation to deliver Delivered Power, and Buyer's obligation to accept and pay for Delivered Power, under this Agreement shall commence on the Commercial Operation Date and shall continue until December 31, 2039, subject to earlier termination of this Agreement pursuant to the terms hereof (the "Term").

2.5 Contract Price. Buyer shall pay for Delivered Power on a per MWh basis, at the applicable Contract Price set forth in Exhibit E.

2.6 Environmental Attribute Purchase Option. Buyer shall have the option, on an annual basis, to purchase all Environmental Attributes associated with the production of renewable energy from the Facility at a fixed price of \$10.00 per MWh. To exercise this option, Buyer shall notify Seller on or before July 1st of any calendar year during the Term (except for the last calendar year of the Term) that (i) Buyer is irrevocably exercising this option, and (ii) the number of calendar years commencing on the immediately succeeding January 1 for which Buyer commits to purchase Environmental Attributes at a fixed price of \$10.00 per MWh; *provided, however*, that this period may not to exceed the lesser of (a) five calendar years or (b) the number of calendar years remaining in the Term. At Buyer's expense, Seller shall take such steps as may be reasonably required to transfer the Environmental Attributes to Buyer. Buyer shall have the right to purchase such Environmental Attributes only in association with the renewable energy that Buyer purchases under this Agreement during the Term and, notwithstanding the period for which the option is exercised, Buyer shall have no right to receive Environmental Attributes associated with energy generated by the Facility after the Term.

ARTICLE THREE: PURCHASE AND SALE OF DELIVERED POWER

3.1 Seller's and Buyer's Obligations.

- (a) Delivered Power. From and after the Commercial Operation Date, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, all Delivered Power at the Delivery Point pursuant to the terms of this Agreement.
- (b) Environmental Attributes, Environmental Incentives and Power Attributes. Except to the extent that Buyer timely exercises the option to purchase Environmental Attributes as set forth in Section 2.6, Seller hereby retains all Environmental Attributes, Environmental Incentives and any capacity, reliability or other power attributes related to the Facility or its Delivered Power.
- (c) Costs and Charges. Seller shall be responsible for any costs or charges imposed on or associated with the Delivered Power or its delivery of the Delivered Power up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Delivered Power or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. If necessary, Seller shall arrange and be responsible for transmission service to the Delivery Point and shall deliver the Delivered Power to the Delivery Point. If necessary, Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its transmission provider to receive the Delivered Power at the Delivery Point. Delivered Power shall be scheduled in accordance with the then-applicable tariffs, protocols, operating procedures and scheduling practices.

3.3 Title and Risk of Loss. Seller shall convey good title to the Delivered Power to Buyer at the Delivery Point free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Delivered Power or prevent the subsequent transfer of such Delivered Power by Buyer to a third party. Title to and risk of loss with respect to Delivered Power delivered to Buyer by Seller in accordance with this Agreement shall pass from Seller to Buyer when such Delivered Power is delivered at the Delivery Point. Until title passes, Seller shall be deemed in exclusive control of the Delivered Power and shall be responsible for any damage or injury caused thereby. After title to the Delivered Power passes to Buyer, Buyer shall be deemed in exclusive control of such Delivered Power and shall be responsible for any damage or injury caused thereby.

3.4 Billing and Payment. Unless otherwise specifically agreed upon in writing by the Parties, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month. The Seller shall invoice the Buyer for Delivered Power (including Delivered Power deemed delivered under Section 3.7) between each Meter read point

date. All undisputed amounts under any invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month or the fifteenth (15th) Business Day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

3.5 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment on the amount determined to be correct shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from the subsequent payment, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 3.5 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

3.6 Taxes. Seller shall be responsible for and shall pay (or reimburse Buyer for) any and all taxes or similar governmental charges of any type that may be assessed on or with respect to the Delivered Power prior to the Delivery Point, and Buyer shall be responsible for and shall pay (or reimburse Seller for) any and all taxes or similar governmental charges of any type that may be assessed on or with respect to the Delivered Power at and from the Delivery Point (including the sale and transfer of the Delivered Power to Buyer). Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax.

3.7 Curtailment for Emergency. Buyer may require Seller to curtail the production and delivery of Delivered Power only in the event of, and to the extent and for the duration of, an Emergency on Buyer's transmission or distribution system that requires the curtailment of Delivered Power in order to correct or mitigate that Emergency. Buyer shall not have any right to curtail Delivered Power for economic reasons or for any reason other than such an Emergency. If the Facility is curtailed for any reason other than an Emergency or Seller's breach of this Agreement, the Delivered Power that could have been delivered to Buyer but for the

curtailment shall be deemed delivered to Buyer for all purposes under this Agreement, including invoicing and payment. Seller shall determine the quantity of Delivered Power that could have been delivered during the curtailment period based on (a) the time and duration of the curtailment period, (b) solar exposure conditions recorded at the Facility during that period, and (c) the Facility design described in Exhibit B, using PVSYST or an equivalent modeling program.

ARTICLE FOUR: FACILITY CONSTRUCTION

4.1 Construction of Facility. Seller shall design and construct the Facility in accordance with Good Industry Practice and in accordance with the Facility Milestones (as the same may be extended in accordance with this Agreement).

4.2 Milestones; Delays.

(a) Facility Milestones. Seller shall meet each Facility Milestone as specified in Exhibit C on or before the date specified for each Facility Milestone listed in Exhibit C; *provided, however*, that the date for each Facility Milestone may be extended for Force Majeure as provided in Section 7.1, and for Interconnection Delays as provided in Section 4.2(b). If Seller fails to achieve the Facility Milestones by the date specified in Exhibit C (as such date may be extended under Section 7.1 or Section 4.2(b)), either Party shall have the right to terminate this Agreement without penalty or liability of either Party. A termination under this Section 4.2(a) shall not trigger the default provisions contained in Article Ten.

(b) Interconnection Delays. The Interconnection Agreement outlines the expected duration to secure Permits associated with the Interconnection Facilities and to construct the Interconnection Facilities. If (i) according to the Interconnection Agreement, the expected duration to secure Permits or to construct the Interconnection Facilities extends beyond the Facility Milestones, or (ii) the Permits associated with the Facility or the interconnection to the Facility are not in place for reasons associated with the interconnection and not solely caused by any action or inaction on the part of Seller, the Facility Milestones shall be extended on a day-to-day basis based on such delays (“**Interconnection Delays**”).

4.3 Performance Tests. Seller shall notify Buyer at least ten (10) Business Days prior to the commencement of any Performance Tests with respect to the declaration of the Commercial Operation Date of the Facility. Buyer shall have the right to be present at and witness each such Performance Test. Within five (5) Business Days of the successful completion of the Performance Tests pursuant to Exhibit D, Seller shall provide Buyer with a written certification signed by an authorized officer of Seller certifying that all of the requirements for Commercial Operation hereunder have been satisfied with respect to the entire Facility at which point the Commercial Operation Date shall be deemed to have been achieved at the Facility Capacity described in such certificate.

4.4 Interconnection Facilities. The Parties acknowledge and agree that the Interconnecting Utility may be responsible for the construction of the Interconnection Facilities.

ARTICLE FIVE: FACILITY OPERATION

5.1 Metering. As part of the Interconnection Agreement, the Seller shall provide, install, own, operate and maintain Meter(s) in good operating condition in accordance with Good Industry Practice, or as required in the Interconnection Agreement. Buyer may also install a Meter, at its expense. If more than one Meter is installed, then data from all Meters shall be aggregated into one revenue Meter. The metering system design shall be approved by Buyer prior to commencement of construction of the Facility. The Meters shall be used for quantity measurements under this Agreement. Such equipment shall be bi-directional and shall be capable of measuring and reading instantaneous and hourly real and reactive energy and capacity and shall be capable of remote transmission of measured data. Seller, at its expense, may install additional check meters. Seller shall not install any check-metering equipment on Buyer-owned facilities. Seller shall not undertake any action that may interfere with the operation of the Meters, and shall be liable for all costs, expense, and liability associated with any such interference with the Meters.

5.2 Meter Tests. Meters shall be tested prior to installation, and during commissioning of the generator. For each subsequent year, additional testing may be provided at Buyer's expense and at Buyer's discretion. Either Party may request a special test of Meters or check meters, but the testing Party shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case the Party whose meters were found to be inaccurate shall be responsible for the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment or calibration of the Meters or check meters. Buyer shall provide at least fifteen (15) days prior notice of routine Meter testing to Seller. Seller shall provide fifteen (15) days prior notice of routine check meter testing to Buyer. In the event of special Meter testing, the Parties shall notify each other with as much advance notice as practicable.

5.3 Metering Accuracy. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Seller shall repair and recalibrate or replace the Meters and Buyer shall adjust payments to Seller for the lesser of the period in which the inaccuracy existed and one hundred eighty (180) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; however, the adjustment period shall not exceed ninety (90) days. If adjusted payments are required, Buyer shall render a statement describing the adjustments to Seller within thirty (30) days of the date on which the inaccuracy was rectified. Additional payments to Seller by Buyer shall be made within thirty (30) days of receipt of Buyer's statement. Any payments due Buyer pursuant to this Section 5.3 shall accompany Seller's next billing period statement.

5.4 Planned Delivery Schedules; Day-Ahead Notices. Seller shall provide to Buyer non-binding forecasts of expected available energy in a form reasonably acceptable to Buyer as follows: (i) monthly forecasts ten (10) Business Days before the beginning of each month during the Term beginning in the month preceding the anticipated month of the Commercial Operation Date, (ii) daily forecasts, which shall be submitted by 0600 MST of the Business Day before the forecasted production, or the appropriate scheduling day as required. If the scheduling day is a non-Business Day, then the forecast shall include all non-Business Days up to the next Business Day. Seller shall provide good-faith estimates based on expected production, including any known curtailments and capacity reductions. Buyer and Seller both acknowledge that the Facility electrical generation may vary with changes in actual meteorological or other conditions, and Seller shall not be responsible for such variations in electrical generation.

5.5 Outages.

- (a) In the event of any Forced Outage, Seller shall promptly notify Buyer of the same. Seller shall as soon as practicable under the circumstances notify Buyer verbally and shall then, within twenty-four (24) hours thereafter, provide written notice to Buyer. Such notice shall be submitted to Buyer by phone or e-mail and shall generally describe the nature of the Outage, the expected duration and any other pertinent information that will assist Buyer in planning for the decreased Delivered Power and/or availability of the Facility as a result of the Outage. Seller shall return the Facility to service as soon as reasonably possible, consistent with Good Industry Practice, after the circumstances that caused the Forced Outage cease to exist.
- (b) Seller shall provide written notice to Buyer prior to conducting any Planned Outages of the Facility. Within ninety (90) days prior to the Commercial Operation Date, and on or before the first day of each subsequent Contract Year, Seller shall provide Buyer with a schedule of such proposed Planned Outages. Buyer shall promptly review Seller's proposed schedule and may request modifications within thirty (30) days of Buyer's receipt of such schedule. Seller shall use commercially reasonable efforts to accommodate Buyer's requests. Changes to the schedule may be requested by either Party and each Party shall make commercially reasonable efforts to accommodate such changes.

5.6 Operation and Maintenance. Seller, at all times, shall operate, maintain and repair the Facility in accordance with Good Industry Practice.

ARTICLE SIX: REPRESENTATIONS AND WARRANTIES

6.1 Seller Representations and Warranties. Seller represents and warrants to Buyer as of the Execution Date as follows:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (b) it has or will have all regulatory authorizations necessary for it to legally perform its obligations under this Agreement (other than Permits or other regulatory authorizations to be obtained by Seller for the construction, operation or maintenance of the Facility, which Seller reasonably anticipates it will be able to obtain in due course);
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, including any law, rule, regulation, order or the like governing the production and/or sale of electricity;
- (d) the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally;
- (e) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (f) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;
- (g) no Default or Event of Default with respect to the Seller has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and
- (h) Seller will file before Commercial Operation a self-certification of QF status for the Facility pursuant to PURPA.

6.2 Buyer Representations and Warranties. Buyer represents and warrants to Seller as of the Execution Date as follows:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has or will obtain all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, including but not limited to all Buyer's Regulatory Approvals;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not

violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

- (d) the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally;
- (e) no Default or Event of Default with respect to Buyer has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and
- (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

ARTICLE SEVEN: FORCE MAJEURE

7.1 Excuse. Neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement (including any obligation to deliver or accept Delivered Power) if such delay or failure is due to an event of Force Majeure. Time periods for compliance and deadlines (including Facility Milestones) shall be extended on a day-for-day basis for the duration of any event of Force Majeure.

7.2 Definition. “**Force Majeure**” means, subject to Section 7.3, any events that occur subsequent to the Execution Date and before the termination or expiration of the Term of this Agreement and that delays or prevents a Party’s performance of its obligations under this Agreement, but only to the extent that (i) such event of Force Majeure is not attributable to fault or negligence on the part of that Party, (ii) such event of Force Majeure is caused by factors beyond that Party’s reasonable control and (iii) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences. Force Majeure shall in any event include the following:

- (a) acts of God such as storms, hurricanes, floods, lightning, fire, explosion, quarantine, earthquakes, volcanic eruptions or other natural disasters;

- (b) epidemic component defects, sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- (c) war, riot, epidemic, acts of a public enemy or other civil disturbance;
- (d) strike, walkout, lockout, injunction or other significant labor dispute, (provided that a Party shall not be required to settle a labor dispute against its own best judgment);
- (e) action or inaction of a Governmental Authority (including any Change in Law) that prevents Seller from performing its obligations (including operating the generating Facility) or that prevents the Buyer from taking delivery of the Delivered Power from Seller; including, but not limited to, compliance with government requests, orders, actions or national defense requirements, embargoes or acts of civil or military authorities; or
- (f) any reduction in solar insolation due to a natural disaster or significant climate change.

7.3 Exclusions. None of the following shall constitute an event of Force Majeure:

- (a) Buyer's inability economically to use or resell the Delivered Power;
- (b) Buyer's ability to acquire energy from an alternative source at a price lower than the price set forth in this Agreement;
- (c) Seller's ability to sell the Delivered Power at a price greater than the price set forth in this Agreement; or
- (d) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure.

7.4 Covenants. A Party claiming Force Majeure shall:

- (a) provide prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;
- (b) exercise all reasonable efforts to continue to perform its obligations under this Agreement;
- (c) expeditiously take action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem (provided that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party affected by such strike or labor dispute); and

- (d) provide prompt notice to the other Party of the cessation of the Force Majeure event or condition giving rise to its excuse from performance.

7.5 Termination for Extended Force Majeure Event. This Agreement may be terminated by either Party if (a) a Party's obligations hereunder have been excused by the occurrence of an event of Force Majeure pursuant to this Article Seven for longer than twelve (12) consecutive months, and (b) such event of Force Majeure materially impairs the affected Party's ability to perform its obligations under this Agreement. Termination of this Agreement pursuant to this Section 7.5 shall not be considered a termination due to an Event of Default or require the payment of damages by either Party. Following such termination, both Parties shall be released from any further liability under this Agreement.

7.6 Material Casualty Event. This Agreement may be terminated (i) by Seller following a Material Casualty Event, or (ii) by Buyer following a Material Casualty Event occurring after the Commercial Operation Date if Seller has not repaired or rebuilt the Facility within one year of the occurrence of such Material Casualty Event. Termination of this Agreement pursuant to this Section 7.6 shall not be considered a termination due to an Event of Default or require the payment of damages by either Party. Following such termination, both Parties shall be released from any further liability under this Agreement.

ARTICLE EIGHT: ASSIGNMENT

8.1 Assignment. Except as stated in Section 8.2, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either Party, including by operation of law, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void.

8.2 Seller Permitted Assignment for Financing. Seller may, with the consent of Buyer, transfer, pledge, encumber or assign this Agreement or the account, revenues or proceeds hereof, to any of Seller's Lenders in connection with any financing or other financial arrangements for the Facility; provided that Seller shall notify Buyer in writing identifying the Seller's Lender and proposed financing at least 30 days before the closing of financing. Notwithstanding any such transfer, pledge, encumbrance or assignment, Seller shall not be released or discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder prior to such transfer, pledge, encumbrance or assignment. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not transfer, pledge, encumber or assign, sell or otherwise dispose of all or any portion of the Delivered Power (not including the proceeds thereof) to any Seller Lender. Buyer's consent shall not be required in connection with any tax equity financing for the Facility.

8.3 Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

8.4 Collateral Assignment by Seller. In the event that Seller transfers, pledges, encumbers or collaterally assigns this Agreement to Seller's Lenders, Seller shall provide written

notice to Buyer of such transfer, pledge, encumbrance or assignment, including the address of Seller's Lenders. In connection with any financing or refinancing of the Facility, Buyer shall negotiate in good faith with Seller and Seller's Lenders to agree upon a consent to collateral assignment of this Agreement, which consent to collateral assignment shall be in form and substance agreed to by Buyer, Seller and Seller's Lenders, and shall include the following provisions and any other customary provisions reasonably requested by Buyer and Seller's Lenders:

- (a) upon foreclosure (or assignment in lieu of foreclosure) of Seller's Lenders' mortgage or security interest in the Facility, Seller's Lenders shall succeed to the rights and obligations of Seller under the Agreement;
- (b) the Parties shall not amend or modify this Agreement in any material respect without the prior written consent of Seller's Lenders (which approval shall not be unreasonably withheld, delayed or conditioned);
- (c) simultaneously with providing notice to Seller of an Event of Default by Seller, Buyer shall give notice of such Event of Default by Seller to any Seller's Lenders which Buyer has been provided written notice of;
- (d) Seller's Lenders shall have the right, but not the obligation, to cure an Event of Default on behalf of Seller in accordance with the provisions of this Agreement; provided that so long as Seller's Lenders have initiated efforts to effect a cure of such Event of Default and are diligently pursuing such efforts, Seller's Lenders and/or Seller's special allocation partners shall be provided an additional period not to exceed an additional sixty (60) days from the end of the cure period provided to Seller pursuant to this Agreement to effect a cure of such Event of Default;
- (e) upon receipt of a written request from Seller's Lenders, Buyer shall make any and all payments due and owing by Buyer under this Agreement to an account designated by Seller's Lenders, which payments Seller agrees shall fully satisfy Buyer's payment obligations under this Agreement to the extent of such payments.

ARTICLE NINE: INDEMNIFICATION; INSURANCE; LIMITATION OF LIABILITY

9.1 Indemnification. A Party to this Agreement (the "**Indemnifying Party**") shall indemnify, defend and hold harmless, the other Party, its Affiliates and each of their officers, directors, employees, attorneys, agents and successors and assigns (each an "**Indemnified Party**") from and against any and all Indemnified Losses related to injury to persons or damage to property arising out of or resulting from the Indemnifying Party's breach of, or the performance or non-performance of its obligations under this Agreement (including reasonable attorneys' fees, but excluding any Indemnified Losses for which an exclusive remedy is provided in this Agreement; provided, however, that no Party shall be indemnified hereunder for any Indemnified Loss to the extent resulting from its own negligence, fraud or willful misconduct.

9.2 Indemnification Procedures. Any Indemnified Party seeking indemnification under this Agreement for any Indemnified Loss shall give the Indemnifying Party notice of such Indemnified Loss promptly but in any event on or before thirty (30) days after the Indemnified Party's actual knowledge of such claim or action. Such notice shall describe the Indemnified Loss in reasonable detail, and shall indicate the amount (estimated if necessary) of the Indemnified Loss that has been, or may be sustained by, the Indemnified Party. To the extent that the Indemnifying Party will have been actually and materially prejudiced as a result of the failure to provide such notice within the thirty (30) day period, the Indemnified Party shall bear all responsibility for any additional costs or expenses incurred by the Indemnifying Party as a result of such failure to provide notice. In any action or proceeding brought against an Indemnified Party by reason of any claim indemnifiable hereunder, the Indemnifying Party shall assume the defense at the Indemnifying Party's expense, and shall have the right to control the defense thereof and to determine the settlement or compromise of any such action or proceeding. Notwithstanding the foregoing, an Indemnified Party shall in all cases be entitled to control its own defense in any action if it (i) may result in injunctions or other equitable remedies with respect to the Indemnified Party which would affect its business or operations in any materially adverse manner, (ii) may result in material liabilities which may not be fully indemnified hereunder or (iii) may have a material adverse effect on the business or the financial condition of the Indemnified Party (including a material adverse effect on the tax liabilities, earnings, ongoing business relationships or regulation of the Indemnified Party) even if the Indemnifying Party pays all indemnification amounts in full. Subject to the immediately preceding sentence, neither Party may settle or compromise any claim for which indemnification is sought under this Agreement without the prior written consent of the other Party; provided, however, said consent shall not be unreasonably withheld or delayed.

9.3 Insurance. At all times during the Term of this Agreement, Seller shall maintain at its own expense insurance policies for the Facility and its tangible assets in such amounts and against such risks and losses as set forth in Exhibit G hereto. Such insurance policies shall be maintained only with insurers rated at least A- VII by AM Best or comparable ratings agency. If an insurer rating drops below A- VII during a policy period, Seller has until the start of the next policy period to obtain insurance with an insurer rated at least A- VII. Within ten (10) Business Days after receipt of a request for the same from Buyer, Seller shall deliver to Buyer a certificate of insurance for any or all policies maintained in accordance with this Section 9.3, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions. If Seller fails to comply with the provisions of this Section 9.3, Seller shall save harmless and indemnify Buyer from any direct or indirect loss and liability, including attorneys' fees and costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Seller complied with the requirements of this Section 9.3.

9.4 Damage to Property. Except where caused by the other Party's negligence or willful misconduct, each Party shall be responsible for all physical damage to or destruction of the property, equipment and/or facilities owned by it, and each Party hereby releases the other Party from any reimbursement for such damage or destruction. The provisions of this Section 9.4 shall survive any termination, cancellation, expiration or suspension of this Agreement.

9.5 Limitation on Damages. To the fullest extent permitted by law and notwithstanding other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability or otherwise for special, indirect, punitive or consequential damages (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement. For purposes of clarification, any damages that are direct damages under applicable Law (including cover damages) and any damages included in the Termination Payment calculated under Section 10.3 shall not be considered special, indirect, punitive, or consequential damages under this Section 9.5. The provisions of this Section 9.5 shall survive any termination, cancellation, expiration or suspension of this Agreement.

ARTICLE TEN: DEFAULT; REMEDIES

10.1 Events of Default. Except to the extent excused due to an event of Force Majeure in accordance with Article Seven, an event of default (“**Event of Default**”) shall be deemed to have occurred with respect to a Party (the “**Defaulting Party**”) upon the occurrence of one or more of the following events:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice is received by the Party failing to make such payment;
- (b) any representation or warranty made by such Party in Section 6.1 or 6.2, as applicable, is false or misleading in any material respect; provided that (i) if the misrepresentation or breach of warranty is capable of a cure, an Event of Default shall be deemed to occur only if the misrepresentation or breach of warranty is not remedied within ten (10) days after written notice and (ii) if the misrepresentation or breach of warranty is not capable of a cure, but the Non-Defaulting Party’s damages resulting from the inaccuracy can reasonably be ascertained, an Event of Default shall be deemed to occur only if the payment of such damages is not made within thirty (30) days after a written notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after notice, provided that such thirty (30) day period shall be extended for up to an additional ninety (90) days if such Party reasonably commences the cure of such failure and diligently pursues the same;
- (d) such Party (i) admits in writing its inability to pay its debts generally as they become due, (ii) files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory

thereof; (iii) makes an assignment for the benefit of creditors, (iv) consents to the appointment of a receiver of the whole or any substantial part of its assets or (v) has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof;

10.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right (a) to send notice, designating a day, no earlier than ten (10) Business Days after the day such notice is deemed to be received and no later than twenty (20) Business Days after such notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”), (b) to terminate this Agreement and end the Term effective as of the Early Termination Date and collect the Termination Payment, which shall be calculated in accordance with Section 10.3 below or as otherwise expressly provided in this Agreement; (c) withhold any payments due to the Defaulting Party under this Agreement and such payments shall be offset against the Termination Payment; (d) suspend performance; and (e) exercise any other right or remedy available at law or in equity to the extent otherwise permitted under this Agreement.

10.3 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Delivered Power, and (c) at the same or equivalent delivery point, and (d) for the remainder of the Term, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remainder of the Term of the Agreement and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Agreement. Notwithstanding any other provision in this Agreement, the Termination Payment shall be the sole and exclusive remedy available to the Non-Defaulting Party in connection with its termination of this Agreement and shall not include consequential, punitive, exemplary, indirect or business interruption damages (unless such damages are part of a Party’s Gains, Losses and Costs as those terms are defined herein; provided, however, that consequential damages shall never be included). The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Termination Payment.

10.4 Notice of Termination Payment. As soon as practicable after delivery of a notice of termination, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment due from the Defaulting Party to the Non-Defaulting Party, if any. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to

the Non-Defaulting Party, as applicable, within thirty (30) Business Days after such notice is effective.

10.5 Disputes with Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of such a notice, disputes regarding the Termination Payment shall be resolved in accordance with Article Eleven: .

10.6 Rights and Remedies Are Cumulative. Except as otherwise provided herein, the rights and remedies of a Party pursuant to this Article Ten: shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

10.7 Rights and Obligations Surviving Termination. The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination and those that arise from Buyer's or Seller's covenants, agreements, representation and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including:

- (a) the obligations to make a Termination Payment under Article Ten: ;
- (b) the indemnity obligations provided in Section 9.1;
- (c) the obligations of confidentiality set forth in Section 12.2;
- (d) the right to pursue remedies under Article Ten: and Section 12.2;
- (e) the right to receive a Termination Payment under Article Ten: ; and
- (f) the limitations of liabilities under Article Nine: .

ARTICLE ELEVEN: DISPUTE RESOLUTION

11.1 Management Negotiations. The Parties shall use all reasonable efforts to settle disputes through negotiation between authorized members of each Party's senior management. Either Party may, by written notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting, either Party may, by written notice to the other Party, refer the matter to meditation pursuant to Section 11.2 or binding arbitration pursuant to Section 11.3. The first referral made by either Party shall control.

11.2 Mediation. If either Party elects to refer the dispute to mediation, the Parties shall cooperate in selecting a qualified neutral mediator selected from a panel of neutrals proposed by the International Chamber of Commerce, or any other mutually acceptable organization, and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event

later than thirty (30) days after the request for mediation is made. Unless otherwise agreed, the mediation shall be scheduled for a date not later than sixty (60) days after the selection of the mediator. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party.

11.3 Arbitration. If the Parties are unable to resolve their dispute through mediation, then either Party may submit the dispute for resolution by final and binding arbitration. Such arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in effect at the time of the arbitration or such other rules that the Parties may mutually agree upon. The Parties shall cooperate in selecting the arbitrator within thirty (30) days after the demand for arbitration is made and shall further cooperate in scheduling the arbitration to commence no later than ninety (90) days from the date of the demand for arbitration. If the Parties are unable to agree upon a mutually acceptable arbitrator, then each Party shall propose an arbitrator, which two arbitrators shall then together select a third arbitrator who shall serve as the arbitrator with respect to the dispute. Unless otherwise agreed by the Parties, the individual acting as the mediator shall be disqualified from serving as the arbitrator in the dispute. The arbitration shall be held in a location that is mutually agreeable to the Parties or, if they are unable to agree, in New York City, New York. Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment). Discovery shall be limited to twenty five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the dispute or that a Party has improperly withheld documents). Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts. Subject to any limitations on remedies set forth in this Agreement, the arbitrator shall have the authority to grant any form of equitable or legal relief a Party might recover in a court action; provided, however, that the arbitrator shall have no authority to award damages that are not allowed under Section 9.5 and Section 10.3. The arbitrator shall have the authority to require payment of the costs of the binding arbitration (other than each Party's separate attorneys' fees and costs, which fees and costs shall be borne solely by such Party), including the fees of the arbitrator and any expert witnesses, by the Party who did not prevail, but, unless and until such award is made, the Parties shall share equally in the costs of the arbitration. The results of the arbitration shall be binding on the Parties, and judgment on the award may be entered in any court having jurisdiction.

11.4 Qualification. Any mediator and arbitrator selected pursuant to Section 11.2 or Section 11.3, as applicable, shall have recognized expertise and not less than ten (10) years experience in the subject matter of the dispute and shall be neutral and have no prior connection with or financial or other interests in or against either Party.

11.5 Confidential Nature of Proceedings. All communication, offers and statements, whether oral or written, and documents and other writings exchanged between the Parties in connection with the management negotiations pursuant to Section 11.1 and/or the mediation and arbitration pursuant to Section 11.2 or 11.3 shall be confidential and shall not be discoverable, admissible in evidence or used or referred to in any subsequent binding adjudicatory process

between the Parties; provided, however, that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in such negotiations.

ARTICLE TWELVE: MISCELLANEOUS

12.1 Public Announcements. The Parties share a common desire to generate favorable publicity regarding the Facility and their association with it. The Parties agree that they may, from time to time (but only after Seller obtains Site Control), issue press releases regarding the Facility and that they shall cooperate with each other in connection with the issuance of such releases including, without limitation, completed review of press releases proposed to be issued by the other Party by no later than five (5) Business Days after submission by such other Party. Each Party agrees that it shall not issue any press release regarding the Facility without the prior consent of the other, and each Party agrees not to unreasonably withhold or delay any such consent.

12.2 Confidentiality. The Parties shall safeguard Confidential Information against disclosure by employing the same means to protect such Confidential Information as that Party uses to protect its own non-public, confidential or proprietary information, and otherwise in accordance with the provisions of this Section 12.2. Specifically, no receiving Party shall itself, or permit its employees, consultants and/or agents to disclose to any Person the Confidential Information without the prior written consent of the Party providing the Confidential Information, except a receiving Party may distribute the Confidential Information to its board members, officers, employees, agents, consultants, potential investors and lenders who are confidentially bound to the receiving Party and have a need for such Confidential Information. In the event that any Party receiving the Confidential Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, regulatory requirement, civil investigative demand or similar process) to disclose any of the Confidential Information, the legally compelled Party shall give the other Party providing the Confidential Information, prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the notice terms hereof. Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Section 12.2, although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Section 12.2, whether a claim is based in contract, tort or otherwise. The Parties agree that the respondent in any action for an injunction, specific performance decree or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. Under no circumstances will either Party's directors, management, employees, agents or consultants be individually liable for any damages resulting from the disclosure of Confidential Information in violation of the terms of this Agreement.

12.3 Further Assurances. The Parties hereto agree to execute and deliver promptly, at the reasonable expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

12.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

12.5 Notices. All notices, requests, statements or payments shall be made as specified on Exhibit H. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

12.6 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

12.7 Integration. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter.

12.8 Counterparts. This Agreement may be executed in one or more PDF counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.9 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

12.10 Headings and Titles. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

12.11 Severability. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and

conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable provisions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by law.

12.12 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

12.13 Amendments. No amendment to this Agreement shall be effective unless it is mutually agreed upon by the Parties, in writing and duly executed by an authorized representative of each Party.

12.14 No Dedication to Public. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any Person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as a public service corporation or Seller as an independent Person.

12.15 Fixed-Rate Contract: Mobile-Sierra Clause. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's length negotiations between the Parties. Further, the Parties believe that the rates, terms and conditions of this Agreement are just and reasonable within the meaning of Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d or 824e, and that the rates, terms and conditions of this Agreement shall remain so over the life of the Agreement. The Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term thereof, under Sections 205 and 206 of the Federal Power Act and to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree to make no filings at the FERC or with any other state or federal agency, board, court or tribunal challenging the rates, terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest under the Federal Power Act. The Parties hereby further stipulate and agree that unless mutually agreed by the Parties in writing, neither Party may bring any action, proceeding or complaint under Section 205 or 206 of the Federal Power Act, 16 U.S.C. 824d or 824e, seeking to modify, cancel, suspend, or abrogate the rates, terms and conditions of this Agreement, or to prevent this Agreement from taking effect. It is further agreed that, in the event either Party challenges this Agreement for any other reason, such Party shall not dispute the applicability of the public interest standard as that term has been defined and interpreted under the Federal Power Act and the cases of *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and subsequent cases.

12.16 Financial Accounting Standards. Under the latest interpretations of the Financial Accounting Standards Board's Interpretation No. 46(R) (FIN No. 46(R)), "Consolidation of Variable Interest Entities," Buyer may be required to consolidate an entity with which Buyer has entered into a long-term power-purchase agreement. Seller agrees to provide information needed in order for Buyer to determine whether or not Seller must be consolidated by Buyer under FIN No. 46(R). If Buyer determines in its reasonable discretion that Buyer is required to consolidate Seller in its financial statements, Seller agrees to provide reasonable access to any needed records and personnel as reasonably requested by Buyer, so that Buyer's independent auditor can conduct financial statement audits in accordance with generally accepted auditing standards, as well as internal control audits in accordance with Section 404 of the Sarbanes- Oxley Act of 2002. Seller agrees to have adequate controls over financial information. Information obtained by Buyer or its independent auditor pursuant to this Section 12.16 shall be deemed Confidential Information subject to Section 12.2.

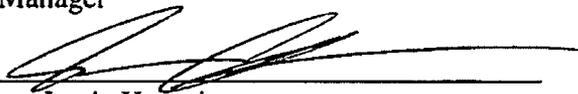
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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Execution Date.

Seller:

LS - Cliffrose, LLC

By: Longview Solar, LLC
Its Manager

By: 
Name: Jamie Houssian
Title: President

Buyer:

UNS Electric, Inc.

By: _____
Name: Carmine Tilghman
Title: Senior Director, Energy Supply

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Execution Date.

Seller:

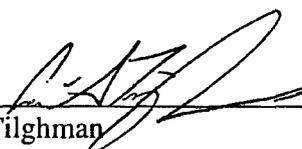
LS - Cliffrose, LLC

By: Longview Solar, LLC
Manager

By: _____
Name: Jamie Houssian
Title: President

Buyer:

UNS Electric, Inc.

By:  _____
Carmine Tilghman
Senior Director, Energy Supply

[Signature Page to Solar Project Power Purchase Agreement]

Exhibit A
Definitions and Rules of Interpretation

A. Definitions.

“**ACC**” has the meaning set forth in the Recitals.

“**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“**Agreement**” means this Solar Project Power Purchase Agreement and all exhibits attached hereto.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“**Buyer**” has the meaning set forth in the Preamble.

“**Buyer’s Regulatory Approvals**” means receipt of a determination from the ACC in form and substance satisfactory to Buyer that (i) the terms and conditions of this Agreement are just and reasonable, and (ii) the costs of purchasing Delivered Power under this Agreement are prudently incurred and that Buyer may recover all costs of purchasing Delivered Power and other costs incurred under this Agreement in its rates, which determination may include a finding that the Agreement is in compliance with the applicable requirements for a contract for the purchase of energy between Buyer and a QF pursuant to Policy Decision No. 52345.

“**Casualty Event**” means any physical damage to or destruction of all or any portion of the Facility by any cause which qualifies as an event or circumstance described in subparts (a) through (f) of the definition of Force Majeure set forth in Section 7.2.

“**Change in Law**” means the enactment, adoption, promulgation, amendment, modification, repeal or change in interpretation by a Governmental Authority after the Execution Date of any law applicable to the Facility and which adversely affects the Party’s ability to perform under the Agreement in a material way. For certainty, the term “Change in Law” does not mean an enactment, adoption, promulgation, amendment, modification repeal or change in interpretation by a Governmental Authority of any law applicable to the Facility that the claiming Party knows or should know will be imposed after the Execution Date.

“**Claims**” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“Commercial Operation” means that the Facility or any part thereof, as applicable: (i) has been constructed in accordance with Good Industry Practice and is capable of delivering Delivered Power to and at the Delivery Point in compliance with all Interconnecting Utility requirements for Facility interconnection and the Interconnection Agreement; (ii) the Facility Capacity is equal to or greater than 80% of the Expected Facility Capacity; (iii) all of the requirements set forth in Section 4.3 and Exhibit D (entitled **“Performance Tests”**) have been satisfied; and (iv) Seller has delivered to Buyer executed copies of Exhibit B and Exhibit F.

“Commercial Operation Date” means the date declared by Seller by notice to Buyer that the requirements of Commercial Operation have been achieved. Seller shall use reasonable commercial efforts to declare the Commercial Operation Date by notice delivered to Buyer a minimum of seventy-two (72) hours in advance of the Commercial Operation Date.

“Condition Deadline” means December 31, 2015.

“Confidential Information” means the specific terms of this Agreement (including the pricing terms hereof) and other information provided by one Party to the other in connection with the negotiation or performance of this Agreement that is clearly labeled or designated by the disclosing party as “confidential” or “proprietary” or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing. Confidential Information shall be deemed not to include (i) information which is or becomes generally available to the public other than as a result of a disclosure by the receiving party, (ii) information which was available to the receiving party on a non-confidential basis prior to its disclosure by the disclosing party or (iii) information which becomes available to the receiving party on a non-confidential basis from a Person other than the disclosing party or its representative who is not otherwise bound by a confidentiality agreement with disclosing party or its agent or is otherwise not under any obligation to disclosing party or its agent not to disclose the information to the receiving party.

“Contract Price” means the price in USD as set forth in Exhibit E to be paid by Buyer to Seller for the purchase of the Delivered Power.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement (including, in the case of Seller as the Non-Defaulting Party, tax recapture costs) and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

“Default” means an event which, with notice or the passage of time, or both, would constitute an Event of Default.

“Defaulting Party” has the meaning set forth in Section 10.1.

“Delivered Power” means the total quantity of electrical power (alternating current) generated by the Facility as measured by its Meter at the Delivery Point.

“Delivery Point” means the point at which the Delivered Power will be delivered, as specified in Exhibit B attached hereto.

“Early Termination Date” has the meaning set forth in Section 10.2.

“Effective Date” means the date on which Buyer’s Regulatory Approvals have been obtained (or each Party has waived in writing its right to terminate this Agreement based upon Buyer’s failure to obtain Buyer’s Regulatory Approvals) and all of the conditions set forth in Section 2.3 have been satisfied or waived in writing by Seller.

“Emergency” means a system condition that exists when one or more of the following criteria are met:

Steady State Conditions

- Actual flow is beyond emergency thermal limit.
- Actual voltage is less than 95% (or other value based on an operating study, operating guide, mutual agreement/understanding between the WECC Reliability Coordinator & Transmission Operator).
- Flow is now - or is calculated to be next hour - at or over limit and there are no transactions or NNL that impact constraint by 5% or more that can be curtailed.
- Actual Frequency is equal to or greater than 60.10hz.
- Actual frequency is equal to or less than 59.90hz.

Contingency Related Conditions

- Actual flow is beyond stability limit.
- Actual flow is beyond phase angle limit.
- Post-contingent flow on a thermal OTDF flowgate would be greater than or equal to 125% of emergency limit (or other value based on an existing operating study or operating guide) should a worst single contingency occur (assumption is that cascading would occur for single contingency).
- Post-contingent voltage would be less than 90% or greater than 110% (or other value based on an operating study, operating guide, mutual agreement/understanding between the WECC Reliability Coordinator & Transmission Operator) for a single contingency.
- Multiple contingencies have occurred – and parties must quickly prepare to withstand next contingency.
- Single contingency occurred and emergency action is required to withstand next contingency ASAP but no longer than 30 minutes.

Other Conditions

- Suspected or confirmed activity (e.g., terrorist activity, sabotage, equipment failure) appears aimed at causing instability on the transmission system and parties must prepare to withstand multiple contingencies.

- Any other event or condition that may not be foreseen, but in the opinion of the WECC Reliability Coordinator poses an imminent threat to the interconnected transmission system.

“Environmental Attributes” means all environmental and other attributes as may exist from time to time that differentiate the Facility or its Delivered Power from energy generated by fossil fuel or nuclear powered generating units, and any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from such Facility, and its displacement of conventional energy generation, including (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States Environmental Protection Agency or other governmental agencies, (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth’s climate by trapping heat in the atmosphere, and (iii) credits, benefits or allowances resulting from the compliance of such Facility or its Delivered Power with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol of the UNFCCC or crediting “early action” with a view thereto. Environmental Attributes include RECs but do not include Environmental Incentives or any capacity, reliability or other power attributes related to the Facility or its Delivered Power.

“Environmental Incentives” means all grants, credits, rebates, incentive payments, benefits, allowances and entitlements of any kind awarded or payable in connection with the installation, ownership or operation of a solar renewable energy system, including rebates, payments and incentives under the American Recovery and Reinvestment Act. “Environmental Incentives” shall exclude Environmental Attributes but shall include Tax Benefits.

“Event of Default” has the meaning set forth in Section 10.1.

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

“Expected Facility Capacity” has the meaning as described in Exhibit B.

“Facility” means the portion of the electric power generation equipment, controls, meters, switches, connections, conduit, wires and other equipment connected to the Delivery Point installed on the Site by Seller pursuant to the specifications attached hereto as Exhibit B for the purposes of providing electric power to Buyer under this Agreement.

“Facility Capacity” means the total nameplate capacity of the Facility, in MW alternating current, that has achieved Commercial Operation as of any particular date.

“Facility Milestones” means each of the milestones listed on Exhibit C.

“FERC” has the meaning set forth in the Recitals.

“Force Majeure” has the meaning set forth in Section 7.2.

“Forced Outage” means any shutdown or unavailability of greater than 50% of the Facility other than pursuant to a Planned Outage, including for reasons of unanticipated equipment breakdown, human error or emergency conditions. A Forced Outage shall not include any Outage that may be deferred to the next scheduled Planned Outage, consistent with Good Industry Practice and without materially increasing the risk of damage to equipment, decreasing safety or incurring additional costs.

“Gains” means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Agreement for the remainder of the Term, determined in a commercially reasonable manner. Factors used in determining economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (*e.g.*, NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Delivered Power. A Party shall use commercially reasonable efforts to obtain third party information in order to determine Gains and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information.

“Good Industry Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry.

“Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations.

“Indemnified Loss” means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, penalties, sanctions, taxes, judgments, damages, losses or expenses imposed by a third party upon an Indemnified Party or incurred in connection with a Claim by a third party against an Indemnified Party.

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

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

“Interconnection Agreement” means the agreement(s) for the electrical interconnection of the Facility to the Interconnecting Utility System by and between Seller and the Interconnecting Utility.

“Interconnection Delays” has the meaning set forth in Section 4.2(a).

“Interconnection Facilities” means the equipment and facilities, including any modifications, additions and upgrades made to such facilities, which are necessary to connect the Facility to the Interconnecting Utility System as described in Exhibit B.

“Interconnecting Utility” means UNS Electric, Inc., or any successor operator or owner of the Interconnection Utility System.

“Interconnecting Utility System” means the facilities used for the collection, distribution and/or transmission of electric energy at and after the Delivery Point owned or operated by the Interconnecting Utility, except the Interconnection Facilities.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remainder of the Term, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Delivered Power. A Party shall use commercially reasonable efforts to obtain third party information in order to determine Losses and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information. If the Non-Defaulting Party is the Seller, then in addition to lost payments for Delivered Power pursuant to this Agreement, “Losses” shall also include any associated loss of Environmental Attributes, Environmental Incentives or Tax Benefits.

“Material Casualty Event” means the occurrence of a Casualty Event (i) if prior to the Commercial Operation Date, that is reasonably likely to extend achievement of the Commercial Operation Date by more than one (1) year or (ii) if after the Commercial Operation Date, where the Casualty Event has caused Facility Capacity to be reduced by more than fifty percent (50%) and the period for the full restoration or repair of that portion of the Facility damaged by the Casualty Event is reasonably likely to exceed one (1) year.

“Meter” means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters owned by Buyer, or its designee, required for (a) accurate determination of the quantities of Delivered Power from the Facility and for recording other related parameters required for the reporting of data to Seller, and (b) the

computation of the payment due to Seller from Buyer. Meters do not include any check meters Seller may elect to install as contemplated by Section 5.1.

“**MST**” means Mountain Standard Time.

“**MW**” means megawatts of electrical power.

“**MWh**” means megawatt hours of electrical energy.

“**Non-Defaulting Party**” means the Party other than the Defaulting Party.

“**Outage**” means the period during which the Facility or a portion thereof is out of service.

“**Party**” means Buyer or Seller.

“**Parties**” means Buyer and Seller.

“**Performance Tests**” shall mean the performance tests required under this Agreement as set forth in Exhibit D in connection with the establishment of the Facility Capacity at the Commercial Operation Date.

“**Permits**” means all permits and approvals, regulatory or otherwise, required from any Governmental Authority for the construction and operation of the Facility.

“**Person**” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, Governmental Authority (or any agency or political subdivision thereof) or any other form of entity.

“**Planned Outage**” means an Outage that is not a Forced Outage, and refers to the shutdown or unavailability of greater than fifty percent (50%) of the Facility for inspection or maintenance in accordance with an advance schedule.

“**PURPA**” has the meaning set forth in the Recitals.

“**QF**” has the meaning set forth in the Recitals.

“**RECs**” means a renewable energy credit defined under Arizona law, including under the REST, or by an Arizona Governmental Authority associated with the production of electricity from an eligible renewable energy resource and where applicable, appropriately registered as such by an Arizona Governmental Authority.

“**REST**” means the Renewable Energy Standard and Tariff.

“**Schedule**” or “**Scheduling**” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s transmission providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Delivered Power to be delivered on any given day or days during the Term at the Delivery Point.

“**Seller**” has the meaning set forth in the Preamble.

“**Seller Condition Precedent**” has the meaning set forth in Section 2.3.

“**Seller’s Lenders**” means a Person lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax investor, backleverage financing or credit derivative arrangement) to Seller or Seller’s Affiliates (a) for the construction, term or permanent financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); or (c) for any development financing, bridge financing, credit support, and related credit enhancement for the development, construction or operation of the Facility.

“**Site**” means the real property on which the Facility is located, to be determined in accordance with the provisions set forth in Exhibit B.

“**Site Control**” means that Seller or Buyer, as applicable, either (a) owns the Site or (b) has obtained the necessary rights and control to construct and operate the Facility on the Site throughout the Term.

“**Tax Benefits**” means incentive tax credits attributable to the Facility or its Delivered Power (or cash grants in lieu thereof), accelerated depreciation attributable to the Facility or its Delivered Power, and any other tax credit or tax write-offs allowed under applicable law attributable to the Facility or its Delivered Power, irrespective of whether such Tax Benefits accrue for the benefit of Seller, any of its Affiliates or any investor of Seller or any of its Affiliates.

“**Term**” has the meaning set forth in Section 2.4.

“**Termination Payment**” means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in USD, which such Party incurs as a result of the liquidation of this Agreement pursuant to Section 10.2 and all amounts then owed to the Non-Defaulting Party by the Defaulting Party. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero.

“**USD**” means United States Dollars.

B. Rules of Interpretation. The following rules of interpretation shall apply to this Agreement:

1. Unless otherwise specified herein, all references herein to any agreement or other document of any description shall, be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies.
2. Capitalized terms used in this Agreement, including the exhibits hereto, shall have the meaning set forth in Part A of this Exhibit A, unless otherwise specified.

3. Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender shall be deemed to include the other. Other grammatical forms of defined words or phrases have corresponding meanings.
4. References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.
5. Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.
6. All references to dollars are to USD.
7. A reference to a law includes any amendment or modification to such law, and all regulations, rulings and other laws promulgated under such law.
8. The words "hereof," "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
9. The words "include," "includes" and "including" means "including but not limited to".
10. References to "days" means calendar days, unless the term "Business Days" shall be used.

Exhibit B
Facility Specifications

Facility Specifications contained herein shall be completed by Seller following final approval of all engineering documents and prior to commencing facility construction. Signatures required when complete. **Exhibit B** shall be provided to Buyer prior to Commercial Operation.

Delivery Point

To be mutually agreed and designated by Buyer and Seller at the time that Seller obtains Site Control.

Expected Facility Capacity: _____ MW (AC), approximately _____ MW (DC)

Facility Specifications

Specify number and type of photovoltaic modules: _____

Module watt size _____

Number and Size of inverters: _____

Type of tracking technology and mounting system (as applicable): _____

Voltage of series connections: _____ volts,

Transformer Specifications: _____

Additional Information: _____

Site Assumptions

The Parties anticipate that the Site will be located in a manner such that the Facility will interconnect directly with Buyer's distribution system. Seller shall be responsible for any interconnection related costs as provided under the Interconnection Agreement.

Seller:
Sign: _____

Buyer:
Sign: _____

Print: _____

Print: _____

Date: _____

Date: _____

**Exhibit C
Facility Milestones**

Milestone
Seller obtains all Permits reasonably necessary to
commence construction of the Facility.

Completion Date
December 31, 2015

The Facility shall have achieved Commercial
Operation with respect to at least 80% of the
Expected Facility Capacity.

December 31, 2016

Seller:

Sign: _____

Print: _____

Date: _____

Buyer:

Sign: _____

Print: _____

Date: _____

**Exhibit D
Performance Tests**

To be proposed by Seller for Buyer review and approval (such not to be unreasonably withheld, conditioned or delayed) a minimum of thirty (30) days prior to the commencement of testing. Signatures required when complete.

Seller:

Sign: _____

Print: _____

Date: _____

Buyer:

Sign: _____

Print: _____

Date: _____

**Exhibit E
Contract Price**

Calendar Year

2015: \$37.95 MWh
2016: \$38.88 MWh
2017: \$40.04 MWh
2018: \$41.53 MWh
2019: \$45.01 MWh
2020: \$45.40 MWh
2021: \$45.80 MWh
2022: \$46.89 MWh
2023: \$47.36 MWh
2024: \$50.12 MWh
2025: \$50.24 MWh
2026: \$50.31 MWh
2027: \$51.04 MWh
2028: \$52.25 MWh
2029: \$53.30 MWh
2030: \$54.36 MWh
2031: \$55.45 MWh
2032: \$56.56 MWh
2033: \$57.69 MWh
2034: \$58.84 MWh
2035: \$60.02 MWh
2036: \$61.22 MWh
2037: \$62.44 MWh
2038: \$63.69 MWh
2039: \$64.97 MWh

Exhibit F
Expected Annual Production

Exhibit F shall be completed by Seller prior to the Commercial Operation Date. Signatures of both parties shall be required when complete; provided, however, that Buyer shall not unreasonably refuse to consent to the figures provided by Seller.

Contract Year

Year 1:	_____	MWh
Year 2:	_____	MWh
Year 3:	_____	MWh
Year 4:	_____	MWh
Year 5:	_____	MWh
Year 6:	_____	MWh
Year 7:	_____	MWh
Year 8:	_____	MWh
Year 9:	_____	MWh
Year 10:	_____	MWh
Year 11:	_____	MWh
Year 12:	_____	MWh
Year 13:	_____	MWh
Year 14:	_____	MWh
Year 15:	_____	MWh
Year 16:	_____	MWh
Year 17:	_____	MWh
Year 18:	_____	MWh
Year 19:	_____	MWh
Year 20:	_____	MWh
Year 21:	_____	MWh
Year 22:	_____	MWh
Year 23:	_____	MWh
Year 24:	_____	MWh
Year 25:	_____	MWh

Total: _____ **MWh**

Seller:
Sign: _____

Buyer:
Sign: _____

Print: _____

Print: _____

Date: _____

Date: _____

**Exhibit G
Required Insurance**

Commercial General Liability:

Seller shall carry Commercial General Liability insurance, to protect against and from loss by reason of personal injury or property damage based upon and arising out of the Seller's liability under this Agreement, in the minimum amounts as follows:

\$1 million per occurrence
\$2 million aggregate

Seller shall also hold Umbrella or Excess Liability in an amount equal to \$10 million

Workers' Compensation and Other:

Seller shall carry Workers' Compensation and/or other insurance as required by state law.

Exhibit H
Notices and Billing Information

General Notices:

If to Seller:

LS - Cliffrose, LLC
c/o Longview Solar, LLC
1080 W. Ewing Place
Suite 300B
Seattle, WA 98119
Attention: Jason Evans
Telephone: 206-708-6055
Facsimile: None.
Email: jason.evans@tuusso.com

If to Buyer:

UNS Electric, Inc.
88 E. Broadway Blvd.
PO Box 711
Tucson, Arizona 85701
Attention: Senior Director – Energy Supply
Telephone: (520) 745-7108
Facsimile: (520) 545-1536
E-mail: ctilghman@tep.com

Operations Related Notices and Billing Information:

[To be designated by Parties prior to Facility construction commencement]