

LONG-TERM TRANSMISSION SERVICE AGREEMENT

BY AND BETWEEN

WESTERN INTERCONNECT LLC

AND

[CUSTOMER NAME]

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**LONG-TERM TRANSMISSION SERVICE AGREEMENT
BY AND BETWEEN
WESTERN INTERCONNECT LLC
AND
[CUSTOMER NAME]**

This Long-Term Transmission Service Agreement (“Agreement”) is made and entered into this [date], by and between **Western Interconnect LLC** (“Transmission Provider”) and **[customer name]** (“Transmission Customer”). Transmission Provider and Transmission Customer may be referred to herein individually as “Party” and collectively as “Parties.”

WHEREAS, Transmission Customer is developing and, when construction is completed, will own and operate a [generation source]-powered electric generating facility (the “[customer name] Project”) on a site in the vicinity of Clovis, New Mexico, and

WHEREAS, Transmission Provider and Transmission Customer, as of the date first set forth above, are entering into a Large Generator Interconnection Agreement (the “Interconnection Agreement”) whereby Transmission Customer’s Interconnection Facilities will interconnect with Transmission Provider’s Interconnection Facilities at the Point of Interconnection as set forth therein so that the output of the [customer name] Project can be delivered to Transmission Provider’s Transmission Facilities, and

WHEREAS, Transmission Customer seeks firm transmission service over Transmission Provider’s Transmission Facilities to deliver electricity generated by the [customer name] Project to the PNM Blackwater Substation, and

WHEREAS, Transmission Provider will develop, finance, construct, own and operate a 345 kV AC transmission line and other ancillary transmission facilities (the “Transmission Facilities”) with sufficient available capacity to transmit electricity generated by the [customer name] Project from the Point of Interconnection under the Interconnection Agreement to the PNM Blackwater Substation on a firm, non-interruptible basis, and

WHEREAS, Transmission Customer intends to secure firm transmission service for the [generation source]-generated electricity generated by the [customer name] Project over transmission systems owned and operated by the Downstream Transmission Providers for purposes of delivering such electricity to utility purchasers in California.

NOW, THEREFORE, in consideration of the premises and for the purposes hereinabove recited, and in consideration for the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions

When used in this Agreement, terms with initial capitalization that are not defined in this Section 1 shall have the meanings specified in the Section in which they are used or in Transmission Provider's OATT applicable to the Transmission Facilities at which time such terms shall have the meanings set forth in such OATT.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Ancillary Services shall mean the following services: scheduling; system control and dispatch; reactive supply and voltage support control from generation sources; regulation and frequency response; energy imbalance; operating reserve and black start capability; and such other services as may be designated as ancillary services under Transmission Provider's OATT, when filed and accepted for filing by FERC.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the reliability council applicable to the Transmission Facilities to which the [customer name] Project is directly interconnected.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Control Area of the Transmission Facilities to which the [customer name] Project is directly interconnected.

Capacity shall mean the generation capacity from the [customer name] Project that can be dispatched and made available by Transmission Customer to Transmission Provider at the Point of Receipt.

Commencement Date shall mean [month day, year].

Confidential Information shall mean all oral and written information relating to the business, strategy, policies, prospects, assets or plans of the other Party or any of the other Party's Related Persons and, to the extent marked "Confidential" or otherwise identified with specificity in writing as confidential at the time of disclosure, all other information provided by the Parties to one another pursuant to this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes generally available to the public other than as a result of a disclosure by the receiving Party in violation of this Agreement; (ii) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (iii) information that becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to the receiving Party; (iv) information that the receiving Party develops

independently without using the Confidential Information; and (v) information that the disclosing Party approves for release in writing.

Consumer Price Index shall mean the U.S. Consumer Price Index for All Urban Consumers (CPI-U, 1982-1984=100), as published from time to time by the Bureau of Labor Statistics.

Contract Capacity shall mean, for any calendar month during the Term of this Agreement, [capacity] MW of Firm Transmission Capacity, which Transmission Provider agrees to sell and provide and Transmission Customer agrees to purchase and receive pursuant to the terms of this Agreement and, where not inconsistent with this Agreement, Transmission Provider's OATT.

Contract Rate shall have the meaning set forth in Attachment 1.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas. A Control Area must be certified by the Applicable Reliability Council.

Damages shall mean any and all claims, liabilities, losses, damages, causes of action, fines interest, awards, penalties, litigation, lawsuits, administrative proceedings, administrative investigations, costs and expenses (including reasonable attorneys' fees, court costs and other costs of suit, arbitration, dispute resolution or other similar proceedings), including for injury, illness or death and including those owed to third parties (whether asserted in contract, in warranty, in tort, by statute or otherwise), except for any damages excluded by Section 16.2.

Downstream Transmission Providers shall mean PNM, Arizona Public Service Company and the California Independent System Operator.

Energy shall mean the electrical energy dispatched from the [customer name] Project and delivered to, or on behalf of, Transmission Customer at the Point of Receipt.

Excused Outage shall mean any outage of the Transmission Facilities or reduction in the total transfer capability of such Facilities below the Contract Capacity (whether as a result of a physical condition, legal impediment or otherwise), if and to the extent due to any reason other than the Transmission Provider's failure to exercise Good Utility Practice.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a *et seq.*

FERC shall mean the Federal Energy Regulatory Commission or its successor.

Financing Parties shall mean lenders and/or equity investors (including any trustee or agent on behalf of such lenders and/or equity investors (including tax equity investors)) providing equity and/or debt financing or refinancing to either Transmission Provider or Transmission Customer, as applicable whether that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

Firm Transmission Capacity shall mean the firm, non-interruptible point-to-point transmission service up to the Contract Capacity over the Transmission Facilities, as measured by the capability to receive electricity generated by the [customer name] Project at the Point of Receipt and deliver such electricity at the Point of Delivery, as determined and implemented in accordance with Good Utility Practice.

Force Majeure shall mean an event or circumstance which prevents a Party from performing its obligations under this Agreement, which event or circumstance is not within the reasonable control of such Party, and which by the exercise of Good Utility Practice, such Party is unable to overcome or avoid or cause to be avoided. Provided the criteria in the first sentence are met, Force Majeure shall include any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, vandalism, act of the public enemy, terrorism, epidemic, civil disturbances, strike, labor disturbances, work slowdown or stoppage, blockades, sabotage, labor or material shortage, national emergency, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by a Governmental Authority. A Force Majeure event does not include acts of intentional wrongdoing by the Party claiming Force Majeure.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric 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 Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean 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 (including FERC, NERC, any independent system operator or regional transmission operator and the Applicable Reliability Council) having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Transmission Customer, Transmission Provider, or any Affiliate thereof.

Imaged Agreement shall have the meaning set forth in Section 20.1.10.

Metering Equipment shall mean all metering equipment installed or to be installed pursuant to this Agreement, as specified in Section 9.1.

Metering Points shall mean the Point of Receipt and the Point of Delivery.

NERC shall mean the North American Electric Reliability Corporation.

Point of Delivery shall have the meaning set forth in Attachment 1.

Point of Receipt shall have the meaning set forth in Attachment 1.

PNM shall mean Public Service Company of New Mexico.

Real Power Losses shall mean energy consumed by the electrical impedance characteristics of the Transmission Facilities.

Related Persons shall mean, in respect of a referenced Person, (i) its owners (direct and indirect) and Affiliates, (ii) its subcontractors and (iii) the respective directors, officers, employees and agents of the referenced Person and the Persons described in clauses (i) and (ii) of this definition.

Transmission Service Charge shall have the meaning set forth in Section 4.2.

Section 2. Transmission Provider's Rights and Obligations

- 2.1 Sale of Firm Transmission Capacity. From and after the Commencement Date and continuing for the Term, Transmission Provider shall make available to Transmission Customer, Firm Transmission Capacity, up to the Contract Capacity, in order to deliver the electricity generated by the [customer name] Project from the Point of Receipt to the Point of Delivery subject to the provisions of this Agreement and Transmission Provider's OATT, the terms and conditions of which shall be incorporated into and made a part of this Agreement. Firm Transmission Capacity shall be subject to curtailment or interruption solely as a result of an Excused Outage.
- 2.2 Other Terms of Service. Certain specific terms of the transmission service that will be provided pursuant to this Agreement are included in Attachment 1 hereto, which are hereby incorporated into and made a part of this Agreement.
- 2.3 Filing Requirements. No less than ninety (90) days prior to the Commencement Date, the Transmission Provider will file an OATT with the FERC pursuant to Section 205 of the Federal Power Act. The OATT shall contain terms and conditions for the provision of point-to-point transmission service under this Agreement that are no less favorable to the Transmission Customer than the provisions of the FERC's *pro forma* OATT adopted in FERC Order No. 890; provided that, to the extent that this Agreement provides more or less favorable terms and conditions than the OATT, this Agreement shall govern. . No less than thirty (30) days prior to making such filing, Transmission Provider shall provide a copy of its proposed OATT to Transmission Customer for comments, provided that Transmission Provider shall be under no obligation to include such comments in the OATT that is filed with the FERC if Transmission Provider concludes that such comments are adverse to its commercial interests and are not required to satisfy the Transmission Providers' open access transmission obligations under FERC Order No. 890. Transmission Customer shall have the right to intervene and protest such OATT filing solely on the basis that the terms and conditions for the provision of the transmission service provided hereunder are less favorable to Transmission Customer than the applicable provisions of the FERC's *pro forma* OATT adopted in Order No. 890, except for any such less favorable provisions

that are included in this Agreement, which the Transmission Customer shall not challenge.

- 2.4 Operations and Maintenance. From and after the Commencement Date, Transmission Provider shall operate and maintain the Transmission Facilities (a) in accordance with Good Utility Practice, (b) in compliance with all Applicable Laws and Regulations and all Applicable Reliability Standards and (c) in compliance with all applicable operating instructions and manufacturers' warranties for the Transmission Facilities.
- 2.5 Outages. If and to the extent an outage of the Transmission Facilities or a reduction in the total transfer capability of such Facilities below the Contract Capacity (whether as a result of a physical condition, legal impediment or otherwise) is due to Transmission Provider's failure to exercise Good Utility Practice (as determined by FERC or pursuant to arbitration hereunder) (a "Non-Excused Outage"), the Transmission Service Charge set forth in Section 4 for such period shall be reduced by an amount that bears the same ratio to the Transmission Service Charge as the amount of unavailable transmission capacity resulting from such Non-Excused Outage bears to the Contract Capacity, and Transmission Provider shall have no right to recover such amounts from Transmission Customer for the duration of the Non-Excused Outage. Transmission Customer shall have the burden of demonstrating that Transmission Provider has failed to exercise Good Utility Practice and shall not be entitled to reduce its payments to Transmission Provider pending a determination that Transmission Provider has failed to exercise Good Utility Practice.
- 2.6 Coordination. The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Transmission Facilities.

Section 3. Transmission Customer's Rights and Obligations

- 3.1 Purchase of Firm Transmission Capacity. From and after the Commencement Date and continuing for the Term, Transmission Customer shall purchase and receive the Firm Transmission Capacity and shall pay the Transmission Service Charge on a monthly basis calculated in accordance with Section 4 and Attachment 1. Through its purchase of Firm Transmission Capacity from Transmission Provider and the payment of the Transmission Service Charge, Transmission Customer shall be entitled to schedule, for any hour, the transmission of [generation source]-generated electricity from the [customer name] Project over the Transmission Facilities up to the Contract Capacity applicable for that hour. Transmission Customer shall not be entitled to schedule electricity from any source other than the [customer name] Project under this Agreement or change the Point of Delivery or Point of Receipt.
- 3.2 Ancillary Services. From and after the effective date of Transmission Provider's OATT, Transmission Customer, in addition to its payment of the Transmission

Service Charge, shall be responsible for any monthly charges for Ancillary Services for which Transmission Customer is required to arrange under the OATT at the monthly rate(s) for such Ancillary Service(s) set forth in the OATT, as such monthly rate(s) may change from time to time, plus (iii) any other charges or expenses set out in Attachment 1.

- 3.3 Real Power Losses. Transmission Customer shall be responsible for all Real Power Losses associated with the Firm Transmission Capacity between the Point of Receipt and the Point of Delivery by supplying at the Point of Receipt the quantity of electricity associated with such losses, as determined by Transmission Provider; provided, however, that, following the FERC's acceptance of Transmission Provider's OATT for filing, Transmission Customer shall have the options for compensating Transmission Provider for Real Power Losses in accordance with the OATT. If and to the extent any Real Power Losses associated with the Firm Transmission Capacity between the Point of Receipt and the Point of Delivery are determined by FERC to be due to Transmission Provider's failure to exercise Good Utility Practice, such incremental Real Power Losses shall be treated as Non-Excused Outages for which Transmission Provider shall be liable in accordance with Section 2.5.

Section 4. Transmission Service Charge

- 4.1 Transmission Customer Payment. Commencing on the Commencement Date and for each calendar month thereafter for the Term, Transmission Customer shall pay Transmission Provider the Transmission Service Charge for Firm Transmission Capacity calculated in accordance with this Section 4 and, if applicable, as further adjusted in accordance with Section 2.5.
- 4.2 Transmission Service Charge. The Transmission Service Charge shall be the product of the Contract Capacity and the Contract Rate set forth in Attachment 1.

Section 5. Billing and Payment

- 5.1 Initiation of Payment Obligation. All payment obligations for the provision of Firm Transmission Capacity under the terms of this Agreement shall commence as of the Commencement Date.
- 5.2 Invoices. Within seven (7) business days after the first day following the end of each calendar month after the Commencement Date, Transmission Provider shall submit an invoice to Transmission Customer for the Transmission Service Charge for the preceding calendar month, and Transmission Customer shall pay the amounts set forth in the invoice within twenty (20) days following its receipt of such invoice. All payments shall be made in immediately available funds payable to Transmission Provider by wire transfer to a bank named by Transmission Provider, in accordance with wiring instructions provided to Transmission Customer by Transmission Provider in writing. Transmission Provider shall be entitled to change the place or recipient for payment by thirty (30) days' prior

written notice to Transmission Customer. To the extent that information required to prepare an invoice is not available to Transmission Provider at the time of Transmission Provider's invoice, Transmission Provider may issue such invoice on an estimated basis using the best available information that it has at that time and then include an adjustment pursuant to Section 5.3 to reflect the actual information in the next invoice after such information becomes available to Transmission Provider.

- 5.3 Reconciliation. In the event that either Party to this Agreement discovers an error in billings or payments under this Agreement due to metering, billing or other errors, or a prior invoice was prepared on an estimated basis pursuant to Section 5.2, each Party shall be entitled to an adjustment of the amount payable hereunder to reflect such revised price, error discovery, or the availability of actual (as opposed to estimated) invoicing information. A Party that seeks an adjustment to invoices as described in this Section 5.3 must provide the other Party with notice and a description of the desired adjustment within one (1) year of the date the invoice that is to be adjusted was received by Transmission Customer. Such notice shall include a calculation of the payment necessary to correct the prior invoice. Any invoice that has not been challenged pursuant to this Section 5.3 within one (1) year of the date it was received by Transmission Customer shall be deemed final and not subject to adjustment under this Section 5.3.
- 5.4 Interest. All interest payable under this Section 5.4 shall be calculated pursuant to 18 C.F.R. § 35.19a(a), as such regulation (or any successor thereto) is in effect during the period during which such interest is due. Interest on refunds owed to Transmission Customer by Transmission Provider shall begin to accrue on the amount subject to refund, as originally invoiced, from the earlier to occur of the due date or the date of payment on the monthly invoices to which the refund relates and shall continue to accrue until the date of payment of such refund. Interest on over-payments owed by Transmission Provider to Transmission Customer shall begin to accrue from the due date of the monthly invoice to which such over-payment relates and shall continue to accrue until the date of payment of such over-payment.
- 5.5 Billing Disputes. Transmission Customer may, in good faith, dispute the correctness of any invoice rendered under this Agreement. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of such invoice shall be required to be made when due, with notice of the objection given to Transmission Provider in writing and stating the basis for the dispute (including all supporting calculations). Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made (and any overpayment shall be refunded) within fifteen (15) business days after such resolution and shall include interest as calculated pursuant to Section 5.4.

- 5.6 Record-keeping. Transmission Provider shall create and keep (i) meter records and other records substantiating amounts due from Transmission Customer to Transmission Provider under this Agreement and (ii) all other records required to be kept by Transmission Provider according to Applicable Laws and Regulations. Transmission Provider shall maintain the records that it is required to create and keep under this Section 5.6 according to Good Utility Practice and, if applicable, generally accepted accounting practices, consistently applied. Transmission Provider shall keep and maintain those records for a period of at least four (4) years after the respective records are created, and Transmission Customer may inspect and audit those records during normal business hours upon reasonable advance notice. Each Party's costs of audits will be borne by such Party.

Section 6. Term

- 6.1 Effective Date. This Agreement shall become effective and enforceable to the extent permitted by Applicable Laws and Regulations as of the date of execution by both Parties. Notwithstanding the foregoing sentence, this Agreement shall become effective as a FERC rate schedule upon the effective date established by FERC in its order accepting this Agreement for filing (the "Effective Date"). Transmission Customer shall provide Transmission Provider with any information reasonably required by Transmission Provider in order to prepare and submit the Agreement to FERC and Transmission Customer agrees to support FERC's acceptance of the Transmission Provider's FERC filing without modification or condition. If the FERC requires the Parties to make any material modification of this Agreement before it can be accepted for filing, the Parties will endeavor in good faith to agree upon such modification; provided that if either Party believes that any such modification changes the balance of consideration hereunder in a material way, such Party may reject such modification and the Agreement shall be terminated unless the Parties can convince FERC to modify its order requiring such modification.
- 6.2 Commencement Date. The term of this Agreement shall commence on the Commencement Date and shall expire on the twenty-fifth (25th) anniversary of the Commencement Date, unless earlier terminated in accordance with the terms hereof (the "Term"); provided, however, in the event that Transmission Customer ceases operation of the [customer name] Project, Transmission Customer shall have the right to terminate this Agreement effective following the twentieth (20th) anniversary of the Commencement Date, without liability of either Party arising out of such termination (except liability that arose prior to the date of termination) upon no less than twelve (12) months prior written notice.
- 6.3 Rights Upon Termination or Expiration. Applicable provisions of this Agreement shall continue in effect after the date of termination or expiration of this Agreement only to the extent necessary (a) to provide for final billings and adjustments related to the period prior to the date of termination or expiration or as may be otherwise applicable after such date and (b) to give effect to a Party's surviving rights and remedies under Sections 8, 13, 15, 16 and 20.

- 6.4 Roll-over Rights. Unless earlier terminated in accordance with the terms hereof, Transmission Customer shall have the right, upon expiration of the Term set forth in Section 6.2, to extend the term of this Agreement for up to five (5) successive five-year periods upon written notice to Transmission Provider provided no later than one (1) calendar year prior to the expiration of the Term or extended term, as applicable. Upon Transmission Customer's exercise of its roll-over rights pursuant to this Section 6.4, the Contract Rate set forth in Attachment 1 to remain in effect for such additional five-year period shall be adjusted based on fifty percent (50%) of the annual percentage change in the Consumer Price Index from the twentieth (20th) anniversary of the Commencement Date to the commencement of such additional five-year period. In all other respects, the terms and conditions of this Agreement shall remain unchanged.

Section 7. Events of Default

- 7.1 If any of the following events occur:
- 7.1.1 Failure to Pay. A Party fails to make, when due, any payment required pursuant to this Agreement (other than amounts disputed in good faith), and such failure is not remedied within thirty (30) days after written notice of such failure from the other Party;
- 7.1.2 Material Breach. A Party is in material breach of its obligations under this Agreement (other than an obligation to make payment under Section 7.1.1, an obligation that is otherwise specifically set forth in this Section 7.1 as a separate Event of Default, or an obligation in respect of which this Agreement provides a remedy that is stated to be an exclusive remedy), and such breach is not remedied within thirty (30) days after written notice of such breach from the other Party (provided that, to the extent such breach is not reasonably capable of being remedied within the thirty (30) day remedy period specified above but is reasonably capable of being remedied, such Party shall have such additional time as is reasonably necessary to remedy such breach).);
- 7.1.3 Misrepresentation. A Party's representation or warranty made in this Agreement proves to have been false in any material respect when made and (i) the underlying facts are not corrected or cured so as to make such representation and warranty either correct or immaterial within thirty (30) days after written notice of such misleading or false representation or warranty from the other Party (provided that, to the extent such inaccuracy is not reasonably capable of being remedied within the thirty (30) day remedy period specified above but is reasonably capable of being remedied, such Party shall have such additional time as is reasonably necessary to remedy such inaccuracy, so long as such Party promptly commences and diligently pursues such remedy) or (ii) if such inaccuracy is not capable of a remedy but the other Party's Damages can be ascertained, the payment of Damages is not made within ten (10) business

days after the amount of such Damages is agreed upon by the Parties or is determined by a final and non-appealable judgment or order;

7.1.4 Bankruptcy. A Party (a) either (i) files a petition or otherwise commences, or authorizes the commencement of, a proceeding or cause under any bankruptcy, insolvency, receivership or similar law for the protection of creditors; (ii) has such a petition filed or proceeding commenced against it, which remains un-dismissed for ninety (90) days; (iii) files an answer or pleading admitting or failing to contest the material allegations of any such petition; (iv) takes any action for its winding up, liquidation or dissolution; (v) is otherwise adjudged bankrupt or insolvent under any bankruptcy, insolvency, receivership or similar law for the protection of creditors; or (vi) consents to any of the actions described in the preceding clauses (i) through (v) and (b) fails to perform its obligations under this Agreement and such failure is not remedied within fifteen (15) days after written notice of such failure from the other Party; or

7.1.5 Unauthorized Assignment. A Party assigns or transfers this Agreement or any portion thereof in violation of Section 12 of this Agreement;

then an “Event of Default” shall exist as to such Party (the “Defaulting Party”) and the other Party (the “Non-Defaulting Party”) shall be entitled to exercise the remedies set forth in Section 8. Any dispute over whether an Event of Default has occurred shall be resolved in accordance with Section 15.

Section 8. Remedies

8.1 Termination. If an Event of Default occurs and is continuing, the Non-Defaulting Party shall have the right to exercise one or more of the following remedies: (i) to terminate this Agreement early by providing notice to the Defaulting Party and (ii) to exercise such remedies as are otherwise provided in this Agreement available at law or in equity, including the right to specific performance in the event of Transmission Provider’s default for failure to make available to Transmission Customer Firm Transmission Capacity, up to the Contract Capacity, as required hereunder and the right to Damages arising out of the Event of Default, including, in the case of termination of this Agreement as a result of an Event of Default, Damages suffered by the Non-Defaulting Party as a result of such termination. Further, whether or not this Agreement is terminated, either Party may assert any claims available to it under this Agreement or at law or in equity, so as to recover Damages against the other Party resulting from any breach of or default under this Agreement by such other Party. Each Party shall use commercially reasonable efforts to mitigate its Damages resulting from the other Party’s breach of or default under this Agreement, including upon any termination hereof as a result of an Event of Default of the other Party.

8.2 Suspension. In addition to (and without limiting) the remedies for Event of Default set forth in Section 8.1 or otherwise available under this Agreement, at

law or in equity, during the existence of an Event of Default, the Non-Defaulting Party may, by written notice to the Defaulting Party, suspend (in whole or in part) its performance under this Agreement, but without relieving the Defaulting Party of its obligations to pay any Damages arising out of such Event of Default.

- 8.3 Resumption of Performance following Cure. If a Non-Defaulting Party has suspended under Section 8.2, then after the Defaulting Party's cure of such Event of Default (prior to any valid termination of this Agreement by the Non-Defaulting Party, and provided there is no other Event of Default by such Defaulting Party then occurring and remaining uncured), the Non-Defaulting Party will resume performance of its obligations under this Agreement as soon as possible thereafter.
- 8.4 Waiver of Other Rights to Terminate or Suspend. Notwithstanding anything to the contrary, except for the rights to terminate and suspend expressly set forth in this Section 8, pursuant to Section 6.2 or in the event of a Force Majeure in accordance with Section 14.2, neither Party shall have any right to terminate this Agreement or suspend its performance other than in connection with an Excused Outage.
- 8.5 Payment of Damages. Promptly upon any termination of this Agreement pursuant to Section 8.1, the Non-Defaulting Party shall determine in a commercially reasonable manner its Damages, and any payments then due to the Non-Defaulting Party for prior performance (net of payments owed to the Defaulting Party for prior performance, if any). The Non-Defaulting Party shall provide by notice to the Defaulting Party, its determination of Damages, together with reasonable supporting material. The Defaulting Party shall pay such Damages within thirty (30) days of such notice. Any dispute concerning the determination of Damages shall be resolved in accordance with Section 15.
- 8.6 Inability to Perform Due to Breach. If a breach by a Party to this Agreement shall wholly or partly prevent the performance (or the ability to perform) of the other Party under this Agreement, then the performance of the Non-Defaulting Party shall be excused to the extent prevented by the breach.
- 8.7 No Cross-Default. This Agreement shall not be affected in any manner by any cross-default or other provision in any other agreement or document (whether between the Parties, any of their Affiliates or any other Persons and whether entered into before or after the Effective Date) unless the other agreement or document is entered into by the Parties after the Commencement Date and expressly provides that the cross-default or other provision applies to this Agreement.
- 8.8 Remedies Cumulative. Except as expressly provided otherwise herein, all remedies set forth herein are cumulative and not exclusive of any rights, privileges and remedies provided by Applicable Laws and Regulations.

Section 9. Metering

- 9.1 General. Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Delivery prior to any operation of the Transmission Facilities and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Transmission Facilities shall be measured at the Point of Delivery. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Transmission Customer upon request. Transmission Customer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.
- 9.2 Check Meters. Transmission Customer, at its option and expense, may install and operate, on its premises and on its side of the Point of Delivery, one or more check meters to check Transmission Provider's meters. Such check meters shall be for check purposes only and shall not be used for measurement of power flows for purposes of this Agreement, except as provided for in Section 9.4. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Provider or its designee. The installation, operation and maintenance thereof shall be performed entirely by Transmission Customer in accordance with Good Utility Practice.
- 9.3 Standards. Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards.
- 9.4 Testing of Metering Equipment. Transmission Provider shall inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by the Transmission Customer, Transmission Provider, at Transmission Customer's expense, shall inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Transmission Customer may have representatives present at the test or inspection. If, at any time, Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Transmission Customer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Transmission Provider's failure to maintain, then Transmission Provider shall pay. If Metering Equipment fails to register, or if the measurement made by the Metering Equipment during a test varies by more than two percent (2%) from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the measurements by correcting all measurements for the period during which the Metering Equipment was in error by using Transmission Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

- 9.5 Metering Data. At Transmission Customer's expense, the metered date shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Transmission Customer. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered to the Metering Points.

Section 10. Resale of Transmission Service

- 10.1 Transmission Provider's Resale Rights. If and to the extent that Transmission Customer determines, from time to time and in its sole discretion, that the Firm Transmission Capacity over the Transmission Facilities exceeds Transmission Customer's needs, Transmission Provider shall have the right to resell such unused capacity to third parties in accordance with the Transmission Provider's OATT.
- 10.2 Capacity Releases for Daily and Hourly Use. From and after the Commencement Date, if and to the extent that Transmission Customer, by the applicable scheduling deadline, schedules electrical energy for delivery over the Transmission Facilities in a quantity utilizing less than the Contract Capacity, Transmission Provider shall have the right to sell the unused Contract Capacity to third parties by posting such capacity on Transmission Provider's OASIS. Transmission Customer shall provide Tres Amigas, LLC with all schedules of transmission service under this Agreement concurrently with the submission of such schedules to the Transmission Provider and the applicable Control Area operators.

Section 11. Representations and Warranties

- 11.1 On the Effective Date, each Party hereby represents and warrants (or shall be deemed to represent or warrant, as applicable) to the other Party as follows:
- 11.1.1 Good Standing. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation and is in good standing and qualified to do business in each jurisdiction where the failure to so qualify could reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations under this Agreement or on the business, operations or financial condition of such Party.
- 11.1.2 Authority. It has all necessary company power and authority to execute, deliver and perform its obligations hereunder.
- 11.1.3 No Conflict. Its execution, delivery and performance of this Agreement (i) has been duly authorized by all necessary company action, (ii) does not violate any of the terms or conditions of (A) its governing documents, (B) any contract to which it is a party (or result in acceleration of any amounts owed or otherwise adversely affect its rights or obligations under such a contract) or (C) any Applicable Law currently in effect having

applicability to such Party or its assets (subject, in the case of Transmission Provider as the representing Party, obtaining any permits that are not yet required) and (iii) does not result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the properties of such Party now owned or hereafter acquired, in the case of clause (ii)(C), to the extent such violation could reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations under this Agreement or on the business, operations or financial condition of such Party.

11.1.4 Binding Agreement. This Agreement has been validly executed and delivered on behalf of such Party and constitutes the legal, valid and binding obligation of such Party enforceable against such Party according to its terms, except as the enforceability of this Agreement may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law.

11.1.5 Licenses and Permits. All governmental and other third party consents that are required to have been obtained by it with respect to its execution, delivery or performance of this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with, except, in the case of Transmission Provider as the representing Party, any permits that are not yet required.

11.1.6 Ability to Perform. There is no pending or (to its knowledge) threatened litigation, arbitration or administrative proceeding that could reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations under this Agreement or on the business, operations or financial condition of such Party.

Section 12. Assignment

12.1 Permitted Assignment. Neither Party shall be entitled to assign or transfer all or any portion of its interest in this Agreement, except as provided herein, without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, delayed or conditioned. The non-assigning Party may withhold consent only if it believes, in its sole discretion and in good faith, that the assignment would materially and adversely impact the benefits or burdens of such Party under this Agreement. Any such assignment without the prior written consent of the non-assigning Party is void. Notwithstanding the foregoing, a Party may make the assignments described in Sections 12.2 through 12.5 without the prior written consent of the other Party, but shall provide written notice of such permissible assignments.

- 12.2 Collateral Assignment. Notwithstanding Section 12.1, either Party may (i) collaterally assign this Agreement to a Financing Party relating to the construction or long term financing or refinancing for the Transmission Facilities or the [customer name] Project, as applicable and in connection with any such permitted collateral assignment, the non-assigning shall promptly execute and deliver (A) a collateral assignment consent agreement to be entered into by the assigning Party, the non-assigning Party and the assigning Party's Financing Parties that recognizes and consents to (x) the assigning Party's collateral assignment of rights and obligations under this Agreement and (y) the assigning Party's Financing Parties' rights to be notified of, and allowed to cure, any breach or default of this Agreement by the assigning Party, and to exercise any step-in rights consented to by the assigning Party, and other customary terms as reasonably may be requested by such Financing Parties or (B) other agreements with Financing Parties reasonably requested by such Financing Parties, containing customary terms and conditions, and/or (ii) for the avoidance of doubt, issue or sell equity interests in the assigning Party to a Financing Party pursuant to any tax equity investment, and, in connection with any such tax equity investment transaction, the non-assigning Party shall promptly execute and deliver an estoppel certificate or other agreements with Financing Parties reasonably requested by such Financing Parties, containing customary terms and conditions. In no case shall any such rights and terms of a collateral assignment consent agreement described in this Section 12.3 materially adversely affect any of the non-assigning Party's commercial rights or obligations under this Agreement. The non-assigning Party agrees to otherwise cooperate in a timely manner with the due diligence efforts of any such Financing Parties and to deliver reasonable and customary legal opinions, if required, in connection with any collateral assignment and consent agreement, estoppel certificate or any other agreement or document referenced in this clause (i) of this Section 12.3 that is entered into with or for a Financing Party; provided that if requested by the non-assigning Party, the assigning Party shall reimburse the non-assigning Party for its reasonable third-party legal expenses incurred in connection with reviewing any such agreement or certificate, providing any such legal opinion and/or any such due diligence efforts.
- 12.3 Assignment to Western Interconnect LLC. In connection with the construction or long-term financing of the Transmission Facilities, Transmission Provider shall be permitted to assign this Agreement to Western Interconnect LLC. If such assignment occurs, Tres Amigas, LLC (the initial Transmission Provider hereunder) shall have the right to have this Agreement re-assigned back to it when it closes financing of the construction of that phase of the Tres Amigas, LLC project that will result in Tres Amigas, LLC providing FERC-regulated transmission services. No approval of either Party shall be required hereunder for such re-assignment or for any change in ownership or control of Tres Amigas, LLC that occurs simultaneously with or shortly after such re-assignment.
- 12.4 Assignment to an Affiliate. Either Party may transfer or assign all of its rights and obligations under this Agreement to an Affiliate, which Affiliate's

creditworthiness is equal to or higher than that of such Party at the time of assignment; and

- 12.5 Transfer of Assets. Either Party may transfer or assign all of its rights and obligations under this Agreement to any Person succeeding to all or substantially all of its assets (or substantially all of the assets of its ultimate parent, as applicable), which Person's creditworthiness is equal to or higher than that of such Party at the time of assignment.
- 12.6 Release from Liability. In no event shall the assigning Party be released from its liabilities and obligations under this Agreement without the consent of the other Party in its sole and absolute discretion, except that, if either Party assigns this Agreement as permitted by Section 12.1, 12.2, 12.3, 12.4 and 12.5, such Party shall, to the extent the assignee assumes the liabilities and obligations of such Party under this Agreement, be released from such liabilities and obligations (provided that in the case of an assignment under Section 12.4 above only, that the assigning Party shall be released from its liabilities and obligations relating to the period prior to the date of assignment with respect to any Event of Default that has occurred and is continuing at the time of such assignment only if such Event of Default is cured).

Section 13. Confidentiality

- 13.1 Non-Disclosure. Except as provided in this Section 13 neither Party shall publish, disclose, or otherwise divulge Confidential Information to any Person at any time during or after the Term or use such Confidential Information for any purpose other than (i) the receiving Party's performance of its obligations under this Agreement, (ii) the receiving Party's responsibilities as a Balancing Authority and a Transmission Provider and (iii) to comply with Applicable Laws and Regulations, without the other Party's prior express written consent. Except as may otherwise be required by Applicable Laws and Regulations (but subject to the remainder of this Section 13) and no press release or other similar public announcement or publication in any media concerning this Agreement or the subject matter of this Agreement may be made by either Party without the consent of the other Party.
- 13.2 Required Disclosure. A receiving Party may use and disclose Confidential Information where required to do so in litigation, administrative, regulatory or other legal proceedings or otherwise by Applicable Laws and Regulations, but only after notice to the providing Party and affording the providing Party an opportunity to seek a protective order or other relief to prevent or limit disclosure of the Confidential Information. In such event, the receiving Party shall reasonably cooperate in connection with the providing Party's efforts to obtain such protective order or other relief. Further, each Party shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation or administrative or regulatory proceeding or in any other instance where disclosure is required by Applicable Laws, and shall promptly notify the

providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise.

- 13.3 Permitted Disclosure. Notwithstanding anything to the contrary herein, each Party may provide any Confidential Information: (i) to Downstream Transmission Providers, any other Governmental Authority or any other Person (including subcontractors, consultants, accountants, financial advisors, experts, legal counsel and other professional advisors to the Parties) as required for scheduling, settlement and billing or otherwise to perform under or administer this Agreement; (ii) to Financing Parties or potential Financing Parties, Affiliates and lessors, owners of and potential bidders and bidders for, and potential purchasers and purchasers of, direct or indirect interests in the Transmission Facilities or the [customer name] Project, as applicable (including direct or indirect interests in the equity interests of Transmission Provider or Transmission Customer, as applicable) and to any credit rating agency that has issued a credit rating for Transmission Provider or Transmission Customer, as applicable, or any of its Affiliates. Each Party shall cause its personnel and all Persons to whom it discloses the Confidential Information to treat it confidentially and to not disclose it to any other Person in any manner whatsoever. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

Section 14. Force Majeure

- 14.1 Effect of Force Majeure. To the extent a Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations under this Agreement, then the affected Party shall be excused from performing such obligations.
- 14.2 Termination Due to Force Majeure event. If, prior to the Commencement Date, any Force Majeure prevents substantially all construction of the Transmission Facilities or the [customer name] Project for a period of twelve (12) consecutive months or longer, Transmission Customer may (so long as the consecutive days of excused performance are continuing) terminate this Agreement, without liability of either Party arising out of such termination (except liability that arose prior to the date of termination), upon at least thirty (30) days written notice.
- 14.3 Notice of Force Majeure event and Cure Plan. The Party claiming the occurrence of a Force Majeure event that prevents it from performing its obligations under this Agreement shall give the other Party written notice of the Force Majeure event, including the date of its initiation, as soon as practicable after the affected Party becomes aware of such Force Majeure event and shall provide available details no later than fifteen (15) days after the affected Party becomes aware of such Force Majeure event further describing the facts related to the occurrence and consequences of the Force Majeure event. Such Party shall proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying its performance and shall prepare a Force Majeure cure plan describing the actions reasonably expected to be necessary to overcome the

Force Majeure event and the time reasonable anticipated to perform such actions. Thereafter, such Party shall provide progress reports to the other Party at least every thirty (30) days describing actions taken to remedy the consequences of the Force Majeure event, the schedule for future actions and the expected date by which performance shall no longer be affected by the Force Majeure event. When such Party has overcome such Force Majeure event and is ready to resume full performance under this Agreement, written notice shall be provided to the other Party and full performance shall resume.

Section 15. Disputes

- 15.1 Submission. In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, such Party (the “Disputing Party”) shall provide the other Party with written notice of the dispute or claim (“Notice of Dispute”). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) days of the other Party’s receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.
- 15.2 External Arbitration Procedures. Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Arbitration Rules”) and any applicable FERC regulations; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Section 15, the terms of this Section 15 shall prevail.
- 15.3 Arbitration Decisions. Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and

shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service.

- 15.4 Costs. Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

Section 16. Indemnification, Consequential Damages and Insurance

- 16.1 Indemnity. The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

16.1.1 Indemnified Person. If an Indemnified Person is entitled to indemnification under this Section 16 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Section 16.1, to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

16.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Section 16, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

16.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section 16.1 may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

- 16.2 Consequential Damages. In no event shall either Party be liable under any provision of this Agreement for any Damages for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that Damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.
- 16.3 Insurance. Each party shall, at its own expense, maintain in force beginning on the Commencement Date and thereafter throughout the period of this Agreement, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the state where the Metering Points are located:

- 16.3.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Interconnection is located.
- 16.3.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.
- 16.3.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.
- 16.3.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars (\$20,000,000) per occurrence/Twenty Million Dollars (\$20,000,000) aggregate.
- 16.4 Additional Insureds. The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.
- 16.5 Primary Coverage. The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

- 16.6 Term of Coverage. The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.
- 16.7 No Limitation of Obligations. The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this Agreement.
- 16.8 Certificate of Insurance. Within ninety (90) days following the Commencement Date, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, each Party shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.
- 16.9 Self-Insurance. Notwithstanding the foregoing, each Party may self-insure to meet the minimum insurance requirements of Section 16.3.2 through 16.3.4 to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade or better by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Section 16.3.2 through 16.3.4. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Section 16.3.2 through 16.3.4. In the event that a Party is permitted to self-insure pursuant to this article, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Section 16.3.
- 16.10 Reporting Requirement. The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

Section 17. Transmission Customer Deposit

Transmission Customer shall, within ninety (90) business days following the Effective Date, submit to Transmission Provider a deposit equal to the Transmission Service Charge for one month of Firm Transmission Service unless, prior to such date, Transmission Provider determines that Transmission Customer is credit-worthy, in which case the requirement to make such deposit shall be waived.

Section 18. No Challenge

Neither Party shall directly nor indirectly challenge the equity, fairness, reasonableness or lawfulness of any rates, terms or conditions set forth in or established according to this

Agreement before any Governmental Authority or other forum. To the extent that either Party may be called upon by any Governmental Authority to do so, each Party shall support and defend this Agreement before such Governmental Authority when the substance, validity or enforceability of all or any part of this Agreement is challenged or called into question before such Governmental Authority. Without limiting the foregoing, neither Party shall seek (directly or indirectly), nor support any third party in seeking, to revise the prices, fees, rates, terms or conditions set forth in or established according to this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act or any other provisions of the Federal Power Act (if applicable). Further, the standard of review for changes to the prices, fees, rates, terms or conditions set forth in or established according to this Agreement proposed by a Party (to the extent that any waiver in this Section 19 is unenforceable or ineffective as to such Party), a non-Party or the FERC acting *sua sponte* shall solely be the most restrictive legally permissible “public interest” application of the “just and reasonable” standard of review as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. (2008).

Section 19. Notices

Any notices, requests, statements, or demands shall, unless otherwise agreed to by the Parties, be in writing and may be delivered by hand delivery, registered or certified United States mail (postage prepaid), overnight courier service, or facsimile, addressed as follows:

To Transmission Provider:

Western Interconnect LLC
Pier 1, Bay 3
San Francisco, CA 94111
Attention: General Counsel
Phone: 415-283-4000
Fax: 415-362-7900

To Transmission Customer:

[customer name]
[address]

Attention:
Phone:
Fax:

Section 20. Miscellaneous

20.1.1 Entire Agreement. This Agreement, including all Annexes hereto, contains the entire understanding of the Parties with respect to the subject matter hereof and shall completely and fully supersede all prior understandings or agreements, both written and oral, including any term sheet, between the Parties relating to the subject matter hereof and thereof. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. The section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.

- 20.1.2 Amendment/Binding Effect. This Agreement shall become effective and binding upon the Parties as of the Effective Date upon the execution and delivery of this Agreement by each of the Parties and acceptance of this Agreement for filing by FERC without modification or condition. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns.
- 20.1.3 Waiver. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any term and condition hereof is breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.
- 20.1.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of New Mexico without regard to principles of conflicts of law that would require the application of the laws of any other jurisdiction.
- 20.1.5 Further Assurances. Each Party shall deliver or cause to be delivered to the other Party such instruments, documents, statements, certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested to the extent required for the requesting Party to carry out the purposes of this Agreement or fulfill any legal obligation or regulatory reporting requirements.
- 20.1.6 No Rights of Third Parties. This Agreement is intended only for the Parties' benefit, and nothing in this Agreement may be construed to create any duty to, any standard of care concerning, or any liability to, any person not a Party to this Agreement.
- 20.1.7 Joint Preparation. This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and shall not be construed against one Party or the other as a result of the manner in which this Agreement was prepared, negotiated or executed.
- 20.1.8 Relationship of the Parties. This Agreement shall not be interpreted or construed to (a) create an association, joint venture or partnership between the Parties or impose any partnership obligation or liability on either Party, or (b) create any agency relationship between the Parties or impose any fiduciary duty of any kind on either Party, or (c) create a

trust or impose any trust obligations of any kind on either Party, or (d) constitute a lease of any properties of any kind. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of, or otherwise bind, the other Party. Each Party waives any and all rights that it may otherwise have under Applicable Laws or legal precedents to make any claim or take any action against the other Party or any of its Related Persons in respect of this Agreement based on any theory of agency, fiduciary duty or other special standard of care.

20.1.9 Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

20.1.10 Imaged Agreement. Any original executed copy of this Agreement or any other related document may be photocopied and stored on computer tapes and disks (“Imaged Agreement”). If an Imaged Agreement is introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, it shall be considered as admissible evidence. Neither Party shall object to the admissibility of the Imaged Agreement on the basis that such was not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.

IN WITNESS WHEREOF, each of the Parties has caused its duly authorized representative to execute this Agreement on its behalf as of the date first written above. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original of equal validity and all of which constitute one and the same document.

WESTERN INTERCONNECT LLC

By: _____

Title: _____

Date: _____

[CUSTOMER NAME]

By: _____

Title: _____

Date: _____

**ATTACHMENT 1
TO THE
LONG-TERM TRANSMISSION SERVICE AGREEMENT
BY AND BETWEEN
WESTERN INTERCONNECT LLC AND [CUSTOMER NAME]**

Dated as of [month day, year]

Transmission Customer:

Reserved Contract Capacity:

Beginning Date of Service: [month day, year]

Ending Date of Service: [month day, year]

Point of Receipt: The Point of Interconnection as defined in the Large Generator Interconnection Agreement between the Parties

Point of Delivery: PNM Blackwater Substation

Contract Rate: \$2,292 per MW-month

Ancillary Service Charges

Schedule 1 Charges:

Schedule 2 Charges:

Schedule 9 Charges: