

# ATTACHMENT A

## **ATTACHMENT A**

### **Definitions**

1. “Agreements” means the Sales Agreement and Interconnection Agreement.
2. “Application” means the Application to Participate in the Heber Light & Power Company Feed-In Tariff (FIT) Program, including the instructions and supporting documents.
3. “Applicable Law” means any and all applicable laws, rules, regulations, ordinances, codes, orders or permits of any and all Governmental Authorities, including zoning, construction, environmental and worker safety laws.
4. “Approved Application” means the Application to Participate in the FIT Program and supporting documents submitted by the Customer and approved by the Company for participating in the Program. The Application and supporting documents are attached as Attachment B.
5. “Company” means the Heber Light & Power Company, a Utah energy services interlocal entity and political subdivision.
6. “Company’s System” means (a) the Company’s distribution facilities used to generate and deliver electricity to its customers and (b) those facilities of that are necessary, consistent with Prudent Utility Practice, to permit the Company to take at the Meter the Energy generated by the Customer’s Facility.
7. “Customer” means the Customer identified in the first sentence of the Interconnection Agreement.
8. “Default” is defined in Section 14 of the Interconnection Agreement.
9. “Default Amount” is defined in Section 15.3 of the Interconnection Agreement.
10. “Electric Codes” means: the National Electric Code, the National Electric Safety Code, IEEE Standards, and Underwriters Laboratories Standards.
11. “Energy” shall the electricity produced by the Generation Facility and delivered to the Meter.
12. “Emergency” is defined in Section 10.1 of the Interconnection Agreement.
13. “Force Majeure” means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, such as: (a) acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; (b) high winds of sufficient strength or duration to materially damage a properly designed or constructed facility or significantly impair its operation; (c) lightning, fire, or ice storms; (d)

sabotage or vandalism beyond that which could reasonably be prevented by the Party claiming Force Majeure; (e) terrorism, war, fire, riot, explosion, blockade, or insurrection; (f) strike, slow down,

or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); (g) actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance; and (h) inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority. A Force Majeure does not include (1) events caused by an act of negligence or wrongdoing by the Party claiming Force Majeure; (2) events arising from the failure by the Party claiming Force Majeure to design, construct, operate or maintain a facility in accordance with Prudent Utility Practices and the Agreements; (3) market forces or economic conditions that adversely affect a party's economic ability to economically use or resell the Electric Power or operate, maintain, repair or replace their respective facilities; or (4) the Customer's ability to sell the Electric Power at a price greater than the Contract Price; (5) failure of third parties to provide services, materials, and equipment essential to a party's performance, unless such failure is caused by a Force Majeure; (6) delays in or an inability of the Party claiming Force Majeure to obtain financing or (7) economic hardship.

14. "General Services Customer" means a Customer who is not a Residential Customer and includes small, medium and large General Services Customers.

15. "Governmental Authority" shall mean any federal, state, regional, county, town, city, municipality or political subdivision whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government, including the Company.

16. "Interconnection Agreement" means the Interconnection Agreement executed by the Parties effective on \_\_\_\_.

17. "Manufacturer Directions" means equipment manufacturer directions for: (a) the safe and effective installation, operation and maintenance of the Generation Facility or (b) for testing the Facility.

18. "Monthly Statement" is defined in Section 4.3 of the Sales Agreement.

19. "Party" or "Parties" means, individually or collectively, the Customer or Company.

20. "Production Meter" means the meter that measures the Energy produced by the Generation Facility and delivered at the Meter to the Company.

21. "Program" means the FIT Program approved by the Company's Board of Directors on May \_\_, \_\_\_\_.

22. “Program Guidelines” means the guidelines for the implementation of the Program, approved by the Company’s Board of Directors on May \_\_, \_\_.

23. “Program Standards” or “Standards” means, individually and collectively, the following as they may be amended from time to time: (a) the Approved Application, including

design criteria and specifications for the Generation Facility, (b) Prudent Utility Practice, (c) Electric Codes, (d) the Company’s Interconnection Standards, (e) Manufacturer Directions, (f) Applicable Law, (g) the Permit to Operate including any conditions to or limitations on the Customer’s operation and maintenance of the Facility, (h) the Interconnection Agreement, and (i) the Sales Agreement.

24. “Prudent Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility 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. Prudent utility practices is not intended to be limited to the optimum practice, method or act to the exclusion of others, but rather to be practices, methods or acts generally accepted in the industry and region. Prudent Utility Practices includes meeting at a minimum the laws or regulations applicable to the activities, facilities or decisions involved and the National Electric Safety Code, as last revised.

25. “Rate” means the price per kWh in Section 4.2 of the Sales Agreement that the Company shall pay the Customer for Energy produced by the Facility and delivered to the Meter.

26. “Renewable Generation” means a facility that generates electricity using sunlight, wind or water as the primary source of energy

27. “Residential Service” means electric service provided to a customer solely for domestic purposes in (1) single family dwelling units; (2) apartments where each dwelling unit is separately metered and billed; and (3) combined family dwelling units. Dwellings where tenancy is typically less than 30 days in length, such as short-term residential rentals, hotels, motels, camps, lodges and clubs, do not qualify for Residential Service.

28. “Sales Agreement” means the Power Sales Agreement executed by the Parties on \_\_\_\_\_.

29. “Service Address” is defined in the Agreements’ recitals and identified in the Approved Application as the location at which the Customer would operate the Generation Facility and receives General Service from the Company.

30. “Service Meter” means the meter that measures that measures the energy delivered to the Customer from the Company’s system.

31. “Generation Facility” or “Facility” means the energy generating system described in the Approved Application and designed and installed at the Service Address and in a manner consistent with the Standards. The Facility may include more than one energy generating system, but the aggregate capacity of the generators shall not exceed the Program limits.

32. “System Upgrades” means improvements to the Company’s system reasonably necessary to accommodate the Generation Facility.

33. “Termination Date” means the earlier of: (a) the expiration of the term of the Agreements as provided in Section 3 of the Agreements or (b) the date of early termination as provided in Section 18 of the Interconnection Agreement.

# ATTACHMENT B

APPLICATION TO PARTICIPATE IN THE FEED-IN TARIFF PROGRAM  
OF  
HEBER LIGHT & POWER COMPANY

**I. Instructions.**

A. Applicability.

A Customer may apply to participate in the Feed-In Tariff (FIT) by completing and submitting this Application. A description of the FIT Program and its requirements are found in the Feed-In Tariff Program Guidelines (Guidelines), available on the Company website. Customers interested in applying for the FIT Program should read the Guidelines carefully before submitting this application. The capitalized terms in this Application are defined in Attachment A to the Guidelines.

This Application applies only to the FIT Program. Customers wishing to install a transfer switch for an emergency or standby generator should submit an Application for Attachment to Residential Meter Socket. Customers with a solar generator having a capacity less than 25 kW may participate in the Company's Net Metering Program. Information concerning each of these programs is available on the Company website.

B. FIT Program Agreements.

A Customer whose Application is approved must enter into a Power Sales Agreement and an Interconnection Agreement to participate in the FIT Program. The terms of these agreements may affect the economic and/or operational viability of the proposed Generation Facility. The Company strongly encourages Customers to carefully review these Agreements before submitting an Application or requesting Company design approval. The basic forms of these Agreements are attached to the FIT Program Guidelines on the Company website; note, however, that these Agreements will generally need to be tailored to each specific project.

C. Customer's Responsible for Design and Operation of the Generation Facility.

The Customer is solely responsible and assumes all risk and liability for the safe, reliable, and economic operation of the Generation Facility. The Customer shall also test the Generation Facility as required by Agreements both prior to connection to the Company System and thereafter during operation.

The Company's approval of a Customer's Application is not intended nor should it be interpreted as the Company's representation or warranty that the Customer's Facility complies with any applicable law including, without limitation, local land use or business ordinances. The Company's approval of the Application including the design and specifications or the Customer's compliance with the Agreements or the Program Standards does not mean that the Generation Facility is safe or may be reliably or economically operated. The Company shall not be liable or responsible for the safety, reliability, design, or protection of the Generation Facility.

D. Required Documentation and Fees.

The Customer's Application should affirmatively show that the proposed Generation Facility complies with the Program Standards including the Company's Interconnection Standards. The Customer should direct questions concerning the application of the Program Standards to the Company's general manager.

The Company will not begin review of an Application unless the Customer pays the application fee and submits two copies of the Application and of the following documents. Drawings must conform to accepted engineering standards, be certified by a Utah licensed electrical engineer and, when requested, be 11"x17":

1. A single-line and three-line drawing showing: (a) the electrical relationship and descriptions of the significant electrical components such as the inverter, primary switchgear, secondary switchboard, protective relays, transformers, generators, circuit breakers, with operating voltages, capacities, and protective, (b) the Customer's loads, and (c) the interconnection with the Company's System which is typically the Production Meter.
2. Technical data sheets on all equipment including inverters, generators, fuses, circuit breakers, and switches.
3. Short circuit calculations.
4. Site plans and diagrams showing the physical layout of the Generation Facility and the location of associated structures and infrastructure such as buildings, streets, driveways, water ways, fences, the Customer's generating equipment and the Company's System.
5. Equipment data sheets issued by the manufacturer for all major components to be installed such as switchgear, secondary switchboard, protective relays, transformers, generators, circuit breakers, inverters, disconnect switches, transfer switches, battery banks, turbines, motors, with operating voltages, capacities, and protective functions.
6. For Customer-owned transformers, if used, to interconnect the Generation Facility with the Company's System, provide transformer nameplate information (voltages, capacity, winding arrangements, connections, impedance, et cetera).
7. For transfer switches or schemes used to interconnect the Generation Facility with the Company's System, provide component descriptions, capacity ratings, and a technical description of how the transfer scheme is intended to operate.
8. For Protective relays or elements used to control and protect the interconnection, provide protection diagrams and control schematics showing relay

wiring and connections, proposed relay settings, and a description of how the protection scheme is intended to function.

9. Certified test reports issued by the manufacturer that demonstrate the generator meets applicable standards may be required for certain applications. Contact the Company to determine if test reports are needed.

10. Completed Project Development Team Form.

E. Engineering Study and System Upgrades.

The Company will conduct a preliminary engineering review of the completed Application and supporting documents to determine whether the proposed Generation Facility complies with the Program Standards, the Company's Interconnections Standards, and the Electric Codes and the estimated cost of the System Upgrades, if such upgrades are required. The cost of the preliminary engineering review is included in the application fee.

If System Upgrades are required, the Customer shall be responsible for cost of the System Upgrades including detailed engineering as necessary. The Customer must pay the estimated costs before the Company will begin construction of the System Upgrades.

**II. Customer Account Information and Location of Generation Facility.**

Customer Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address of Service Connection: \_\_\_\_\_  
Zip: \_\_\_\_\_

State the basis on which the Customer claims a right to construct and operate the Generation Facility at the Service Address, including Customer's interest in property and permitted uses under applicable zoning and subdivision/homeowner association covenants: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Company use only:

- Electric Account Number \_\_\_\_\_
- Meter Number \_\_\_\_\_
- Circuit or Feeder Number \_\_\_\_\_

**III. Customer Contact Information** - Who should be contacted for additional information, if necessary?

- Customer Contact Person: \_\_\_\_\_
- Company Name: \_\_\_\_\_
- Phone: \_\_\_\_\_ FAX: \_\_\_\_\_
- Email: \_\_\_\_\_

- Mailing Address: \_\_\_\_\_
- State: \_\_\_\_\_ Zip: \_\_\_\_\_

**IV. Customer Contractor/Engineer Contact Person**

- Contractor/Engineer Person: \_\_\_\_\_
- Company Name: \_\_\_\_\_
- Phone: \_\_\_\_\_ FAX: \_\_\_\_\_
- Email: \_\_\_\_\_
- Mailing Address: \_\_\_\_\_
- State: \_\_\_\_\_ Zip: \_\_\_\_\_

**V. Proposed Start-Up Date**

\_\_\_\_\_

**VI. Generation Facility Information**

A. Provide the maximum 3-phase fault current that will be contributed by the proposed Generation Facility to a 3-phase fault at the Point of Common Coupling (PCC). (If the Generation Facility is single-phase in design, please provide the contribution for a line-to-line fault.) Consult an electrical engineer or the equipment supplier if assistance is needed in answering this question and please describe the assumptions used in calculating the maximum fault current contribution value.

- Maximum fault current: \_\_\_\_\_ Amps
- Service panel short circuit rating: \_\_\_\_\_ Amps
- Transformer size for the Facility: \_\_\_\_\_ KVA

**VII. Generation Facility Data**

1. Provide the following information regarding the Generation Facility:

Generation Type \_\_\_\_\_

Manufacturer (Name) \_\_\_\_\_

Model (Name/Number) \_\_\_\_\_

Gross Nameplate Rating - KW \_\_\_\_\_

Net Nameplate Rating – KW \_\_\_\_\_ Operating Voltage - V \_\_\_\_\_

Inverter Rating (if applicable) - KW\_\_

2. Has the Generation Facility's inverter been manufactured and tested to UL, ANSI or IEEE standards?

- Yes
- No
- Not Applicable

If yes, provide manufacturer or testing documentation.

- Wiring Configuration
- Single-Phase
- Three-Phase

The Customer and its representative submitting this Application on the Customer's behalf hereby certify, under penalty of perjury, that the information in this Application, the attached plans and project description, and any other information submitted in support of this application are true and correct. The Customer agrees that, in its construction and operation of the Facility, it will comply with the Company's service rules and regulations and Interconnection Standards and comply with all applicable laws and electric codes.

[Customer Name]

\_\_\_\_\_  
By: \_\_\_\_\_ Its: \_\_\_\_

# ATTACHMENT C

# INTERCONNECTION AGREEMENT

This Interconnection Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Heber Light & Power Company, a Utah energy services interlocal entity (“Company”), and [Company/Customer Name] (“Customer”), a General Service Customer of the Company.

## RECITALS

WHEREAS, the Company’s Feed-In Tariff (FIT) Program gives qualifying customers the opportunity to connect Generation Facilities to the Company’s System pursuant to an Interconnection Agreement and to sell the energy produced by the Generation Facilities to the Company pursuant to a Power Sales Agreement.

WHEREAS, the Customer receives retail electric power service from the Company at \_\_\_\_\_ (“Service Address”) under an account in its name.

WHEREAS, the Customer has submitted an Application to Participate in the FIT Program.

WHEREAS, the Company has approved the Customer and its Generation Facility described in the Application for participation in the Company’s FIT Program.

WHEREAS, the Company and the Customer wish to enter into this Generation Interconnection Agreement to provide for the Customer’s construction, operation and maintenance of the Generation Facility and for the interconnection of the Generation Facility to the Company’s distribution system.

## AGREEMENT

**1. DEFINITIONS** The capitalized terms in this Interconnection Agreement are defined in Attachment A.

### **2. PURPOSE OF INTERCONNECTION AGREEMENT**

2.1. This Interconnection Agreement: (a) governs the Parties’ respective rights and obligations with respect to the Customer’s interconnection and parallel operation of the Generation Facility with the Company’s System and (b) applies only to the Generation Facility described in the Approved Application and operating at the Customer’s Service Address.

2.2. This Interconnection Agreement does not give the Customer the right to retail electric service or to transmission service for the output of its Generation Facility and does not modify or otherwise affect any other agreement between the Company and the Customer.

**3. TERM** This Interconnection Agreement shall become effective when both Parties execute the Interconnection Agreement and the Sales Agreement and shall continue in effect for a period of [insert Generation Facility’s estimated useful life] years from the date of

issuance of the Permit to Operate and from year-to-year thereafter, unless terminated earlier under Section 18 of the Interconnection Agreement.

#### **4. CUSTOMER'S COMPLIANCE WITH PROGRAM STANDARDS.**

4.1. The Customer shall keep itself fully informed of the Program Standards including laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights of way, and all changes thereto, which in any manner affect the Customer's construction, operation, maintenance and repair of the Generation Facility and sale to the Company of the Energy produced by the Generation Facility, all as provide for in the Agreements.

4.2. The Customer shall, at its sole expense, obtain all land use approvals, building permits and other permits or licenses, including easements or other permanent interests in real property, which may be required in connection with the construction, operation, repair and maintenance of the Generation Facility and shall give all notices, pay all fees, and take all other action which may be necessary to ensure that the Generation Facility is constructed operated, repaired and maintained in accordance with the Program Standards and Applicable Law.

4.3. The Customer shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing as a result of the construction and operation of the Facility or the sale of the Energy to the Company, including but not limited to (a) income taxes, (b) energy or sales taxes, (c) employment-related fees, assessments, and taxes, (d) property or privilege tax and (d) general excise taxes.

#### **5. CONSTRUCTION OF THE GENERATION FACILITY AND ISSUANCE OF PERMIT TO OPERATE**

5.1. The Customer shall, at its sole expense, construct the Generation Facility in compliance with the Program Standards including: (a) the Approved Application including all construction and design criteria, (b) Prudent Utility Practice including applicable electric codes, (c) the Company's Interconnection Standards, and (d) Applicable Law. The Customer may not alter the approved construction and design criteria, without the Company's prior written consent, which consent shall not be unreasonably withheld.

5.2. The Customer shall complete construction within six (6) months of the Company's approval of the Application.

5.3. The Company has the right, but not the obligation, to inspect the construction of the Generation Facility to verify compliance with the Program Standards. The Customer shall give the Company: (a) reasonable access to the construction site to observe on-going and completed construction, and (b) reasonable notice before covering or making any completed work inaccessible for inspection or testing. If the Customer has not given reasonable notice and completed work is not reasonably accessible for inspection, the

Company may defer or decline issuance of a Permit to Operate until the Customer, at its own expense, makes the work accessible for inspection.

#### 5.4. Performance Verification and Testing.

5.4.1. The Customer shall verify the suitable performance of the Generation Facility by conducting the performance verification testing recommended by the manufacturers of the component parts of the Generation Facility or required by the Program Standards.

5.4.2. The Customer shall provide the Company with fourteen (14) days' advance written notice before the verification testing and permit the Company to observe the testing. If the Customer fails to provide such notice, the Company may require the Customer to conduct the verification testing again, at the Customer's expense, and to permit the Company to observe the testing.

5.5. Upon completion of construction and verification testing, the Customer may provide the Company with a written notice of completion including: (a) a written certification that the Generation Facility has been installed and tested in compliance with the Program Standards including equipment manufacturer instructions, (b) the building inspector's final approval of the construction, and (c) a report of the results of the verification testing.

5.6. Within five (5) business days of its receipt of the notice of completion, the Company will inspect the Generation Facility to determine whether the Facility complies with Program Standards. If the Generation Facility satisfies the Program Standards, the Company will issue a Permit to Operate and install the Production Meter. The Permit to Operate may include conditions concerning the operation or maintenance of the Generation Facility. After issuance of the Permit to Operate, the Customer may close the disconnect switch and operate the Generation Facility.

If the Generation Facility does not comply with the Program Standards, the Company shall notify the Customer, in writing, of the deficiencies and what actions, if any, the Customer may take to correct the deficiencies and obtain a Permit to Operate. The Company will not issue a Permit to Operate unless the Generation Facility complies with the Project Standards and the Customer has paid all amounts due the Company.

If the Customer disputes the Permit conditions or the Company's reasons for denying the Permit, the Customer may submit the matter for resolution under Section 17 of the Interconnection Agreement.

5.7. After the Permit to Operate is issued, the Customer shall not modify the Generation Facility, its protective devices or other components without the Company's prior written consent, which consent shall not be unreasonably withheld.

## **6. CONSTRUCTION OF AND PAYMENT FOR SYSTEM UPGRADES**

6.1. The System Upgrades and the Company's estimate of the cost of the System Upgrades (including labor, material, and overhead/administrative cost) are attached hereto as Attachment B. The Customer shall pay the estimated System Upgrades cost upon execution of the Agreements.

6.2. The Company shall construct the System Upgrades pursuant to the schedule in Attachment B. After the construction is complete, the Company shall provide the Customer with documentation showing the Company's actual System Upgrades cost (including engineering, labor, material, and overhead/administrative cost) and shall reimburse the Customer for any overpayment or invoice the Customer for any deficiency between the amount initially paid and the actual cost of the System Upgrades.

6.3. The Company shall own, operate, maintain, and repair the System Upgrades.

## **7. INSTALLATION, MAINTENANCE, REPAIR, AND OWNERSHIP OF PRODUCTION METER**

7.1. At its own expense, the Company shall: (a) install a Production Meter at the Generation Facility or at the location identified in the Approved Application, (b) repair, maintain and test the Production Meter, and (c) have the right to reasonable access to the Production Meter for repair, maintenance, inspection, and testing. The Production Meter shall be sealed and the seals shall be only be broken by the Company when required for inspection, testing, or adjustment of the Production Meter and when the Customer has been given a reasonable opportunity to be present to observe.

7.2. The Company shall also conduct such tests of the Production Meter as the Customer may reasonably request provided that the Customer pays, in advance, the testing costs. The Customer may be present and observe such testing.

7.3. If the testing shows the Production Meter under- or over reports the production by more than two percent (2%), then the Company shall, at its own expense: (a) replace the Production Meter, (b) make any adjustments in the Monthly Statements as provided in Section 5. of the Sales Agreement, and (c) reimburse the Customer's payment of the testing costs, if any.

## **8. OPERATION, MAINTENANCE AND REPAIR OF GENERATION FACILITY**

8.1. The Customer shall not operate its Generation Facility in parallel with the Company's System, unless the Company has first issued a Permit to Operate.

8.2. Upon issuance of the Permit, the Customer, at its own expense, shall own, operate, maintain, and repair the Generation Facility in compliance with the Program Standards.

8.3. After issuance of the Permit, the Customer shall not modify the Generation Facility without the Company's prior, written approval, which approval shall not be

unreasonably withheld. Upon Company approval, the Customer shall make the modifications in a manner consistent with the Program Standards and the Company's approval. If the Customer modifies its Facility without written approval or in a manner inconsistent with the Program Standards or the Company's approval, the Company may disconnect the Generation Facility and, at the Customer's sole expense, inspect the modifications and test the System for compliance with the Program Standards and this Interconnection Agreement. The Company shall notify the Customer of any deficiencies, and the Customer shall, at its own expense, correct the deficiencies before the Company will reconnect Generation Facility.

8.4. The Customer must maintain the Generation Facility in compliance with the Program Standards including manufacturer recommended periodic maintenance. If the Customer fails to properly maintain the Facility, the Company may disconnect the Generation Facility until such time the Customer provides documentation or other proof of proper maintenance in compliance with the Program Standards.

## **9. COMPANY'S INSPECTION AND TESTING OF THE GENERATION FACILITY**

After the issuance of the Permit to Operate, the Company may, from time-to-time and upon reasonable notice to the Customer, conduct on-site inspections and testing of the Generation Facility to verify compliance with the Program Standards. The Company shall initially pay the cost of such inspection and testing, subject to reimbursement by the Customer if the inspection or testing shows that the Generation Facility or its operation is not in compliance with the Program Standards.

## **10. DISCONNECTION OF GENERATION FACILITY AND INTERRUPTION OF DELIVERY OF ENERGY**

10.1. As used in these Agreements, "Emergency" means a sudden or unexpected circumstance or the resulting state that calls for immediate action to avoid the imminent risk of:

(a) a significant disruption of service to customers or (b) injury to person or property.

10.2. The Company may disconnect the Generation Facility, without liability to the Customer, under the following circumstances regardless of whether the circumstances were caused by a Force Majeure or the Customer's Default:

10.2.1. Emergency Disconnection. The Company may disconnect the Generation Facility, without prior notice to the Customer: (a) if reasonably necessary to eliminate conditions that constitute a potential hazard to Company personnel, the Customer or the general public; (b) if pre-Emergency or Emergency conditions exist on the Company's System; (c) if a hazardous condition relating to the Generation Facility is observed by Company personnel or reported to the Company; or (d) if the Customer has, without the Company's prior written consent, modified any protective device. The Company shall notify the Customer of the need for disconnection under this Section 10.2.1, if circumstances permit.

10.2.2. Planned Outages. The Company may curtail the output of the Customer's Generation Facility or temporarily disconnect the Generation Facility for maintenance, construction, and repairs on the Company's System. The Company shall provide the Customer with five (5) business days' notice prior to such interruption, and shall coordinate such reduction or temporary disconnection with the Customer, in a manner consistent with Prudent Utility Practice.

10.2.3. Forced Outages. During a forced or unplanned outage on the Company's System affecting the Generation Facility, the Company may disconnect the Generation Facility to permit repairs and upgrades to remedy the cause of the outage. The Company shall use reasonable efforts to provide the Customer with notice of the outage.

10.2.4. Generation Facility's Disruption or Interference with Company's System. Regardless of whether an Emergency exists or whether the Customer has Defaulted, the Company may disconnect the Generation Facility if the Company has determined the Generation Facility or its operation causes or may cause: (a) disruption or deterioration of service to other customers, (b) damage to the Company's System, or (c) risk to the safety of Company personnel, the Customer, the general public, or their property. Except in an Emergency, the Company shall give the Customer advance, written notice of the reason for the disconnection under this Section 10.2.4, and the Customer shall have five (5) business days to eliminate the reasons for the proposed disconnection.

10.2.5. The Company's good faith disconnection of the Generation Facility as provided in this Section 10.2 shall excuse the Company's obligation to purchase and the Customer's obligation to sell the Energy from the Generation Facility under Section 4 of the Sales Agreement and shall not give rise to any liability of the Company to the Customer.

10.3. In addition to disconnection under Section 10.2, the Company may disconnect the Generation Facility if

10.3.1. the Customer is in Default of a material provision of the Agreements, or

10.3.2. the Customer modifies the Facility in violation of Section 8.

In the event of a disconnection under this Section 10.3, the Company's obligation to purchase Energy shall be excused and it may pursue its remedies under Section 15 of the Interconnection Agreement.

## **11. OPERATION, MAINTENANCE AND REPAIR OF COMPANY'S SYSTEM**

The Company shall own, operate and maintain the Company's System consistent with Prudent Utility Practice to effectuate the Company's receipt and purchase of the Energy at the Production Meter under the Sales Agreement.

## **12. COMPANY ACCESS TO GENERATION FACILITY AND COMPANY EQUIPMENT**

The Company shall have access to the disconnect switch of the Generation Facility at all times. In addition, the Company, upon reasonable notice and during ordinary business hours, shall have the right to access the Generation Facility and the Company's equipment located on the Customer's property.

**13. CUSTOMER'S REPRESENTATIONS AND WARRANTIES** The Customer represents and warrants as follows:

13.1. The information provided to the Company in the Application and supporting documents is true and correct on the date the Company approved the Application and on the date the Company issues the Permit to Operate.

13.2. The Customer has constructed the Generation Facility consistent with the Program Standards and shall operate, maintain, repair and replace the Facility consistent with the Program Standards.

13.3. The Customer is and shall remain a General Services Customer receiving service at the Service Address during term of the Agreements.

13.4. The Customer is not a public utility and its ownership and operation of the Facility and sale of the Energy to the Company are not subject to regulation by the Utah Public Service Commission or other governmental entity, except for the Company.

**14. DEFAULT**

14.1. General. A "Default" means the occurrence of any of the following:

14.1.1. The failure to make, when due, any payment required pursuant to the Agreements, if such failure is not remedied within three business days after written notice.

14.1.2. A Party's failure to deliver or take Energy in breach of the Agreements as provided in Section 14.2.

14.1.3. The Customer's or the Company's failure to comply with any other covenant of the Agreements, if such failure is not remedied within thirty (30) days after the defaulting Party's receipt of a written notice describing the alleged failure.

14.1.4. The bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, including without limitation proceedings under Title 11, Chapter 9, United States Code or other proceedings for relief under any federal or state bankruptcy law or similar law for the relief of debtors, are instituted by or against the Customer or the Company and, if so instituted, said proceedings are consented to or are not dismissed within thirty days after such institution.

14.2. Failure to Deliver or Take Energy.

14.2.1. Company's Failure to Take. The Company is in Default if the Company fails to take Energy in breach of this Agreement and such failure is not remedied within thirty (30) days after its receipt of the Customer's written notice of default describing the alleged breach.

14.2.2. Customer's Failure to Deliver. The Customer is in Default, if the Customer, in breach of the Agreements, fails to deliver Energy in commercially reasonable time and size blocks and consistent with the Project Standards and if such failure is not remedied within ninety (90) days after the Customer's receipt of the Company's written notice describing the breach.

14.2.3. Multiple Violations. A Party shall not be entitled to an opportunity to cure a breach under Section 14.2, if, during the prior twelve (12) months, the Party on three or more occasions failed to deliver or take Energy.

14.3. Effect of Cure. If a Party timely cures a Default, then no Default shall exist and the noticing Party shall take no further action.

## **15. REMEDIES**

15.1. In the event of a Default and subject to Sections 15.2 and 15.3, the non-defaulting Party may:

15.1.1. recover all amounts described in Section 14.1.1,

15.1.2. terminate the Agreements by giving the defaulting Party a notice of intent to terminate as provided in Section 18,

15.1.3. recover any amounts that accrued but were not yet payable prior to the Termination Date,

15.1.4. recover damages caused by the defaulting Party's Default,

15.1.5. bring any suit, action, or proceeding in law or in equity, including mandamus, injunction and action for specific performance, as may be necessary or appropriate to enforce any covenant, agreement or obligation of the Agreements, subject to satisfaction of the conditions in Section 17.

15.2. Limitation on Remedies and Damages for Failure to Deliver or Take Energy.

15.2.1. Definitions The following definitions apply to the computation of damages under this Section 15.2:

15.2.1.1. "Average Monthly Production" means the Facility's average monthly production during the time period from the commencement

of commercial operation to the Default or, if the Facility has been operated less than twelve months, the Estimated Annual Production divided by twelve.

15.2.1.2. “Default Period” means: the lesser of twelve months or the number of months or parts of months that the defaulting Party has not purchased or delivered Energy in Default of its obligations under the Agreements.

15.2.1.3. “Estimated Annual Production” means the annual estimate of Energy production, based on PVWatts® (NREL) or similar calculator, as set forth in Schedule 1 to Attachment B hereto.

15.2.1.4. “Rate” means the purchase price in Section 4.2 of the Sales Agreement.

15.2.2. In the event of a Default under Section 14.2, the non-defaulting Party’s exclusive remedies shall be termination of the Agreements and/or recovery of damages in an amount equal to the product of the Average Monthly Production, the Default Period, and the Rate. This computation of damages is not a penalty and represents a reasonable estimate of the non- defaulting Party’s damages given the difficulty, impossibility or cost of proving a more precise amount of damage, in light of the dollar amounts in issue.

15.3. Limitation of Remedies and Damages. Except for indemnification under Section 23, the Parties remedies and damages in the event of default are limited as follows:

15.3.1. WITH RESPECT TO A DEFAULT OR DAMAGE CLAIM FOR THE FAILURE TO TAKE OR DELIVER ELECTRICITY UNDER SECTION 14.2, A PARTY’S SOLE AND EXCLUSIVE REMEDY IS THE EXPRESS REMEDY OR MEASURE OF DAMAGES IN SECTION 15.2 AND THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

15.3.2. WITH RESPECT TO DEFAULTS FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS NOT PROVIDED IN SECTION 15.2, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. WITH RESPECT TO SUCH DEFAULTS, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, OR IN TORT OR CONTRACT.

15.4. Notwithstanding the limitations in this Section 15, either Party may seek equitable relief to enforce the negotiation and mediation provisions of Section 17.

## **16. COMPANY'S DISCLAIMER OF WARRANTIES AND LIABILITY**

THE AGREEMENTS ARE NOT INTENDED AND SHOULD NOT BE INTERPRETED AS CREATING A WARRANTY OF ANY KIND (WHETHER EXPRESS OR IMPLIED) CONCERNING THE COMPANY'S SYSTEM AND EQUIPMENT CONNECTED TO THE CUSTOMER'S GENERATION FACILITY, ALL OF WHICH ARE PROVIDED AND ACCEPTED "AS-IS." THE COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IN ADDITION, THE COMPANY IS NOT RESPONSIBLE FOR PROTECTING THE GENERATION FACILITY FROM FLUCTUATIONS ON THE COMPANY'S SYSTEM AND THE CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR PROTECTING THE GENERATION FACILITY, PROPERTY AND PERSONS FROM SUCH FLUCTUATIONS. THE COMPANY SHALL NOT BE LIABLE FOR DAMAGES TO THE CUSTOMER, ITS GENERATION FACILITY OR PROPERTY, OR PERSONS LOCATED IN OR AROUND THE FACILITY CAUSED BY THE OPERATION, FAULTY OPERATION OR NON-OPERATION OF THE COMPANY'S SYSTEM EXCEPT AS PROVIDED IN SECTION 15.2.

## **17. DISPUTE RESOLUTION**

17.1. Good Faith Resolution of Disputes. The Parties shall attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner.

17.2. Mediation. If good faith negotiations do not resolve a dispute under this Agreement, a Party may submit to the other Party a notice of dispute and the Parties shall thereafter attempt to resolve the dispute through good faith negotiations. If the dispute is not resolved within ten (10) business days after the notice is served, the Parties shall submit the dispute to mediation by a mutually acceptable mediator. The mediation shall occur at the Company's offices or at such other location as the Parties may agree. In the event that mediation does not resolve the dispute, each Party shall then be free to enforce its rights under the Agreements through litigation.

17.3. Although the Parties intend to negotiate and mediate in good faith, they agree that no Party can be held liable in damages for an alleged breach of an obligation to mediate in good faith. The Parties further agree that no Party can be held liable for expenses incurred or opportunities foregone by the other Party in reliance on the Party's agreement to mediate in good faith.

17.4. Completion of good faith negotiations under this Section 17 is a condition precedent to a Party's right to commence litigation to enforce the Agreements, except for litigation seeking equitable relief to remedy an imminent threat of injury to person or property or to enforce this Section 17.

17.5. Waiver of Jury.

THE PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ANY LITIGATION CONCERNING THE AGREEMENTS OR THE PARTIES' ACTIONS IN RELATION TO THE AGREEMENTS' SUBJECT MATTER, WHETHER THE CLAIMS ARISE IN CONTRACT OR TORT OR UNDER STATUTE.

## **18. TERMINATION**

18.1. The Agreements may be terminated as follows:

18.1.1. The Agreement terminates at the end of the term.

18.1.2. The Customer may terminate the Agreements at any time, by giving Company written notice of termination that identifies the Termination Date which shall not be earlier than thirty (30) days from the Company's receipt of the notice.

18.1.3. The Agreements shall terminate, automatically, if: (i) the Customer fails, for any reason including a Force Majeure, to obtain a Permit to Operate within six (6) months of the later of the effective date of the Agreements, (ii) either of the Agreements is terminated for any reason including a Force Majeure, (iii) the Customer ceases to be a General Services Customer at the Service Address or to be the owner of the Generation Facility, or (iv) a Party attempts to assign either or both of the Agreements in violation of Section 20. In the event of termination under this Section 18.1.3, and without further action by a Party, the Termination Date shall be the date on which a Party provides notice of the termination to the other party.

18.1.4. In the event of a Default and except as provided in Section 18.1.3, the non-defaulting Party may terminate the Agreements by giving the defaulting Party a notice of intent to terminate that describes the Default and identifies the Termination Date which shall not be earlier than the date of the defaulting Party's receipt of the notice.

18.1.5. If a Force Majeure is not resolved within six (6) months as provided in Section 24, a Party may terminate the Agreements by giving the other Party a notice of termination that identifies a Termination Date, which shall not be earlier than the date of the other Party's receipt of the notice.

18.2. Notwithstanding any other provision of the Agreements, the termination of one of the Agreements terminates both Agreements.

## **19. Disconnection and Survival of Obligations on Termination.**

19.1. On the Termination Date, the Company may disconnect the Generation Facility from the Company's System and the Parties' respective obligation to sell or buy Generation Energy shall terminate, except for the obligation to pay for Energy delivered prior to the Termination Date.

19.2. The provisions of the Agreements shall survive the termination or expiration to the extent necessary to accomplish their purpose and to permit their full performance. Without limiting the foregoing, the following rights or obligations survive termination of the Agreements:

19.2.1. a right based on breach or performance of the Agreements prior to the Termination Date;

19.2.2. the obligation to make payment that accrued prior to the Termination Date whether or not due on the Termination Date;

19.2.3. the obligation to indemnify under Section 23;

19.2.4. the Company's right to disconnect the Generation Facility under Section 10 and to enter the Customer's property to remove the Meter and disconnect the Generation Facility;

19.2.5. the dispute resolution provisions of Section 17 and the choice of law and forum provisions of Section 25.12;

19.2.6. a term limiting the time for commencing an action or for giving notice;

19.2.7. a limitation of remedy or modification or disclaimer of warranty;

19.2.8. any term that the agreement provides will survive; and

19.2.9. the Generation Facility will be disconnected from Company's System.

## **20. ASSIGNMENT**

20.1. Except as provided in Section 20.6, a Party shall not assign or attempt to assign the Agreements unless: (a) the assigning Party simultaneously assigns both Agreements to the same assignee as provided in Section 20.2 and (b) the assigning Party obtains the prior, written consent of the other Party.

20.2. A Party may request the other Party's consent to an assignment by a written request that includes: (a) the proposed assignee's name, mail and email addresses, and principals, (b) documentation showing that the proposed assignee has an equal or greater credit rating than the assigning Party and has the legal authority and operational ability to

satisfy the obligations of the assigning Party under the Agreements (including, as to the Customer, those obligations relating to the size, location and operation of the Generation Facility), and undertakes in writing to perform those obligations.

20.3. As a condition to consenting to the assignment, the Company may require the assignee to submit an Application and to qualify for participation in the Program.

20.4. Any attempted assignment that violates this article is void and ineffective and causes termination of the Agreements under Section 18.1.3.

20.5. An assignment shall not relieve a Party of its obligations under the Agreements. A permitted assignee is responsible for meeting the same financial, credit, and insurance obligations as the assigning Party.

20.6. The Customer may assign its right to payment under the Sales Agreement to a financial institution without the Company's consent, provided that the assignment is in a writing that expressly excludes the assignment or delegation of any other right or obligation under the Agreements including, without limitation, the right to operate the Generation Facility interconnected to the Company's System or to sell the Energy to the Company.

## **21. LIABILITY**

21.1. The Company shall not be liable or responsible for the safety, reliability, design, or protection of the Generation Facility from the operation of the Company's System. The Company's approval of the Application including the design and specifications of the Generation Facility or the Customer's compliance with this Agreement or the Program Standards does not mean that the Generation Facility is safe or may be reliably or economically operated. The Customer is solely responsible and assumes all risk and liability for the economical, safe, and reliable operation of the Generation Facility.

21.2. The Program Standards are designed to protect the Company's distribution system and not specifically the Customer's Generation Facility. The Customer is solely responsible for providing adequate protection for the Generation Facility and all associated equipment. The Customer's protective devices must not impact the operation of other protective devices utilized on the Company distribution system in a manner that would affect the Company's ability to provide reliable service to its customers.

The Generation Facility's protective functions must sense abnormal conditions and disconnect the Generation Facility from the Company distribution system during abnormal conditions. All Generation Facilities must be capable of sensing line-line-line, line-line, and line-ground faults on the distribution feeder supplying the Generation Facility and must disconnect from the line to protect both the line from further damage and the generator from damage due to excessive currents or unusual voltages. The settings of these relays will be coordinated with the Company substation relaying.

21.3. The Company is a political subdivision of the State of Utah and, as such, its liability is governed, limited and controlled by the Governmental Immunity Act of Utah, Utah Code Ann. § 63G-7-101 *et seq.*, as now or hereafter amended. This Agreement is not intended and should not be interpreted as a limitation or waiver of the immunities and procedures provided in the Act.

21.4. The Agreements, Program Standards, or related documents are not intended and should not be interpreted as creating any duty to, any standard of care with reference to, or any liability to any third person.

## **22. INSURANCE**

22.1. Types and Amounts of Insurance. The Customer shall not commence or continue operation of the Generation Facility while connected to the Company's System unless the Customer has obtained and maintains in good standing and at its own expense, insurance of the following types and amounts:

22.1.1. Property Insurance. The Customer shall provide all-risk property insurance for the loss of or damage to the Generation Facility and/or the property on which the Generation Facility is located in the amount of the value of the insured property.

22.1.2. General Commercial Liability Insurance. The Customer shall provide general commercial liability insurance as follows: \$300,000 per occurrence and \$1,000,000 annual aggregate. The commercial general liability insurance shall include, but not be limited to, commercial general liability, completed operations liability, protective liability, blanket contractual liability, products liability and broad form property damage. The amount of coverage, as a combined single limit, shall apply to bodily injury, sickness, disease or death, personal injury, damage to or destruction of the property of persons which may occur directly or indirectly out of or arise out of or in connection with the construction, operation, and maintenance of the Generation Facility and for the defense of claims arising therefrom.

22.2. Terms of Insurance.

22.2.1. Additional Insured. The Company and its members, directors, officers, employees, consultants and contractors ("Insureds") shall be additional insureds by endorsement (I.S.o. Form "B:CG2010" or its equivalent) under the Commercial General Liability insurance policies as to bodily injury, sickness, disease or death, personal injury, damage to or destruction of the property of persons which may arise directly or indirectly out of or in connection with the construction, operation and maintenance of the Generation Facility.

22.2.2. Primary Insurance. The Customer's insurance shall be primary with respect to the additional Insureds; and insurance coverage maintained by the Company shall be in excess of the Customer's insurance and be non-contributing.

22.2.3. Waiver of Subrogation. The Customer's insurance carriers by endorsement (1.S.0. Form #CG 2404 11 85 or its equivalent) shall waive their rights of recovery against the Company, its members, directors, officers and employees, and their successors or assigns including their directors, officers and employees individually and collectively.

22.2.4. Separate or Cumulative Coverage. By endorsement (1.S.0 Form #CG 2501 11 85 or its equivalent), the limits of Commercial General Liability Insurance as required in the Agreements shall apply separately to the Generation Facility or its operation and shall not be reduced by other claims unless the insurance carrier has provided an endorsement agreeing, during the Agreements terms, to immediately notify the Company each time the Commercial General Liability limits have been impaired by more than ten percent (10%), either cumulatively or severally, of the limits indicated on the certificate.

22.2.5. Notice of Cancellation or Modification. The endorsement shall provide that the insurance carrier will give the Company with thirty (30) days advance written notice of cancellation, nonrenewal or any material change in the coverage for all insurance policies required in the Agreements.

22.3. Certificates of Insurance. As a condition to issuance of a Permit to Operate, the Customer shall provide certificates of insurance for the policies described above. The certificates and related endorsements must be satisfactory to the Company as to form and content and must comply with all insurance requirements as set forth herein or the certificate and endorsement may be rejected; and, at its option, the Company may terminate the Agreements.

## **23. INDEMNIFICATION**

Each Party ("Indemnifying Party") indemnifies and saves harmless and defends the other Party and its members, directors, officers, employees, consultants, attorneys, and contractors ("Indemnitees") against any and all third party claims, liability, loss, damage, cost, expense, award, fine, settlement or judgment (including attorneys' fees and costs) to the extent caused by the Indemnifying Party's acts or omissions occurring in connection with the Indemnifying Party's construction, operation and maintenance of its facilities under the Agreements ("Claim"). If the Claim is asserted by an employee of the Indemnifying Party, anyone directly or indirectly employed by the Indemnifying Party or anyone for whose acts the Indemnifying Party may be liable, the indemnification obligation under this Section 23 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Indemnifying Party's workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

## **24. FORCE MAJEURE**

24.1. A Party is not in Default in the performance of its obligations if the Party's inability to perform is due to a Force Majeure. The claiming Party shall, in a manner consistent with Prudent Utility Practices, make reasonable efforts to remedy the Force

Majeure or its effect and to resume performance. The claiming Party is only be excused from performance for the shorter of the duration of the Force Majeure or of the time period reasonably required for the claiming Party to remedy the Force Majeure or its effects.

24.2. The claiming Party shall promptly give the other Party notice of the Force Majeure its nature, cause, commencement date, and anticipated duration. The claiming Party shall also promptly notify the other Party when performance can resume.

24.3. A Force Majeure shall not excuse performance of an obligation not affected by the Force Majeure or of an obligation to make payments then due or accruing prior to the Force Majeure.

24.4. The non-claiming Party shall not be required to perform or resume performance of its obligations to the claiming Party corresponding to the obligations of the claiming Party, excused by Force Majeure.

24.5. If the claiming Party has not remedied the Force Majeure or its effect within six (6) months, either Party may terminate the Agreements.

## **25. GENERAL PROVISIONS**

25.1. Entire Agreement. This Interconnection Agreement and the Sale Agreement with exhibits and attachments shall form a single integrated agreement between the Parties and these Agreements contain the entire agreement between the Parties concerning the subject matter thereof and supersede and cancel agreements, all previous representations, warranties, commitments and writings in respect thereto, whether oral or otherwise.

25.2. Parties' Authorized Representatives. A Party, by written notice to the other, shall designate the representative ("Authorized Representative") who is authorized to act on its behalf with respect to the Agreements and the Party rights and duties under the Agreements. The following are the Parties' respective Authorized Representatives:

For the Customer:

[Name/Address/email/text

] For the Company:

[Name/Address/email/text]

A Party may change its Authorized Representative upon oral notice given to the other, confirmed promptly by written notice.

25.3. Notices. All notices, requests, statements or payments shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, or electronic mail to the Party's Authorized Representative. Notice by facsimile, electronic mail, 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.

25.4. Waiver. A Party's failure to insist upon the strict compliance with any term, provision or condition of the Agreements shall not constitute or be deemed to constitute a waiver or relinquishment of that Party's right to enforce the same in accordance with this Agreements.

25.5. Headings Not to Affect Meaning. The descriptive headings used for the various Articles and sections herein have been inserted for convenience and reference only and shall in no way affect the meaning or interpretation, or modify or restrict any of the terms and provisions hereof.

25.6. No Dedication of Facilities. No undertaking or commitment by one Party to the other Party under this Agreement shall constitute the dedication of the system or any portion thereof of any Party to the public or to the other Party.

25.7. Relationship of the Parties. Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between Company and Customer, or between either or both of them and any other Party. Each Party shall be solely responsible for the means, methods, techniques, sequences and procedures of any work, tasks or other activity under the Agreements, each Party shall be responsible for its own actions and the actions of others, it has retained, in the design or selection of a specific means, method, technique, sequence, or procedure of any work, tasks or other activity under the Agreements. Without limiting the foregoing, a Party has no authority over the compensation or terms and conditions of employment of the employees or workers of the other Party or its contractors or subcontractors.

25.8. Third-Party Beneficiaries. The Agreements are intended solely for the benefit of the Parties, and nothing therein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party.

25.9. Counterparts. The Agreements may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

25.10. Modifications and Amendments. The Agreements may only be modified or amended by a writing signed by each Party or its authorized representative. The Parties have the right to amend or modify the Agreements without the approval of any third-Party.

25.11. Attorneys' Fees. In the event litigation involving the Agreements, the prevailing Party shall be entitled to recover its attorneys' fees and costs.

25.12. Governing Law and Forum. This Agreement shall be interpreted, construed and be subject to the laws of the State of Utah, without regard to principles of conflicts of laws. Any suit, action or other legal proceeding arising out of or relating to this Agreement may only be brought in the Fourth Judicial District Court in and for Wasatch County, Utah. As provided in Section 17.5, the Parties waive their right to a jury trial.

25.13. Waivers. A Party's waiver of or failure to assert any right with respect to any breach of this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute a waiver with respect to any other breach or matter arising in connection with this Agreement. All waivers must be in writing and signed by an authorized representative of the Party granting the waiver.

25.14. Cumulative Rights and Remedies. All rights and remedies provided by this Agreement or available in law or equity are cumulative of each other and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

Agreed to this \_ day of \_\_\_\_\_, 20\_

by [Customer Name]

\_\_\_\_\_  
By: \_\_\_\_\_ Its: \_\_\_\_\_

Heber Light & Power Company

\_\_\_\_\_  
By: \_\_\_\_\_ Its: \_\_\_\_\_

# ATTACHMENT D

# POWER SALES AGREEMENT

This Power Sales Agreement (“Sales Agreement”) is made and entered into this \_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (“Customer”) and the Heber Light & Power Company (“Company”).

## RECITALS:

WHEREAS, the Company’s Feed-In Tariff Program gives qualifying customers the opportunity to connect Generation Facilities to the Company’s distribution system pursuant to an Interconnection Agreement and to sell the power produced by the Generation Facilities to the Company pursuant to a Power Sales Agreement.

WHEREAS, the Customer receives retail electric power service from the Company at \_\_\_\_\_ (“Service Address”) under an account in its name.

WHEREAS, the Customer has submitted an Application to Participate in the Feed-In Tariff (“FIT”) Program.

WHEREAS, the Company has approved the Customer and its Generation Facility described in the Application for participation in the Company’s FIT Program.

WHEREAS, the Company and the Customer wish to enter into this Power Sales Agreement to provide for the Customer’s sale and the Company’s purchase of the Energy generated by the Generation Facility and delivered to the Production Meter.

## AGREEMENT:

**1. DEFINITIONS** The capitalized terms in this Sales Agreement are defined in Attachment A.

**2. PURPOSE OF SALES AGREEMENT**

2.1. This Sales Agreement: (a) governs the Parties’ respective rights and obligations with respect to the purchase and sale of the capacity and the Energy generated by the Generation Facility and (b) applies only to the Generation Facility described in the Approved Application and operating at the Customer’s Service Address.

2.2. This Sales Agreement does not give the Customer the right to retail electric service or to transmission of the Generation Facility’s Energy on the Company’s System and does not modify or otherwise affect any other agreement between the Company and the Customer.

**3. TERM** This Sales Agreement shall become effective (“Effective Date”) when both Parties execute the Interconnection Agreement and the Sales Agreement and shall continue in

effect for a period of [INSERT TERM] years from the date of issuance of the Permit to Operate and from year-to-year thereafter, unless terminated earlier under Section 18 of the Interconnection Agreement.

#### **4. PURCHASE AND SALE OF CAPACITY AND ENERGY**

4.1. Facility Capacity and Output. Upon issuance of the Permit to Operate and during the term of the Agreements, Customer shall sell and the Company shall purchase all of: (a) the Facility's capacity and (b) the Facility's Energy output delivered to the Production Meter in commercially reasonable time and size blocks and consistent with the Project Standards.

4.2. Purchase Price. The Company shall pay for the Facility's capacity and Energy at the FIT rate on a dollars per kWh of Energy produced basis during the month. This FIT rate shall be updated annually by the Company. See Section D. Rate Agreement in the Feed-In Tariff Program Guidelines for additional detail.

4.3. Renewable Energy Credits. [TO BE NEGOTIATED.]

4.4. Monthly Statement. Each month, the Company shall provide the Customer with (a) a monthly statement ("Monthly Statement") of the Energy produced and the amount due and (b) payment of the amount due. The Monthly Statement and payment will be provided at the time that Company ordinarily bills the Customer for retail electric service at the Service Address.

4.5. Objection to Statement. Within thirty (30) days of its receipt, the Customer may object to the Monthly Statement's computation of Energy produced and/or amount due. The objection shall state the grounds for the objection and be resolved as provided in Section 17 of the Interconnection Agreement. If the Customer does not timely object, the Parties shall be conclusively bound by the Monthly Statements computation of the Energy produced and/or amount due, except as provided in Section 5.

4.6. Title and Risk of Loss. Title to and risk of loss related to the Energy shall transfer from the Customer to the Company at and after the Energy is delivered to the Production Meter.

4.7. Exception to Deliver and Purchase Obligations. The Parties respective obligations to deliver and purchase the Energy under this Section 4 are excused to the extent provided in Section 10 of the Interconnection Agreement.

4.8. Source of Company Funds. The Company's obligation to pay for the Facility's capacity and Energy is an operating expense of the Company's System and a cost of purchased electric power and energy and is, solely, payable from the revenues derived from the operation of the Company's System. The Company covenants to and agrees that it will include the payments required under this Section 4 as a cost of purchased electric power and energy and as an operating expense in the Company's annual operating budget.

**5. MEASUREMENT OF FACILITY PRODUCTION**

5.1. The Company shall install, own, maintain, repair and replace the Production Meter as provided in Section 7 of the Interconnection Agreement.

5.2. If the Production Meter under- or over-reports the Energy production by more than two percent (2%), then the Company shall correct the Monthly Statement in the next Monthly Statement for the under- or over-reported production for (a) the actual time period during which the error occurred, if such period can be determined, or (b) if such period cannot be determined, then a period equal to one-half (1/2) of the period from the date of the last previous test confirming the Production Meter’s accuracy, provided, however, that such period in either event shall not exceed one (1) year. Payment of such billing shall constitute full adjustment of any claim between the Parties arising from an inaccurate the Production Meter.

**6. ENTIRE AGREEMENT** This Interconnection Agreement and the Sale Agreement with exhibits and attachments shall form a single integrated agreement between the Parties and these Agreements contain the entire agreement between the Parties concerning the subject matter thereof and supersede and cancel agreements, all previous representations, warranties, commitments and writings in respect thereto, whether oral or otherwise. Without limiting the foregoing, the Parties, for convenience, reference the following sections of the Interconnection Agreement as applicable to the Sales Agreement:

- Section 3 Term
- Section 4 Customer’s Compliance with Applicable Law
- Section 13 Customer Representations and Warranties
- Section 14 Default
- Section 15 Remedies
- Section 16 Company’s Disclaimer of Warranties and Liability
- Section 17 Dispute Resolution
- Section 18 Termination
- Section 19 Disconnection and Survival of Obligations on Termination
- Section 20 Assignment
- Section 21 Liability
- Section 22 Insurance
- Section 23 Indemnification
- Section 24 Force Majeure
- Section 25 General Provisions

*[signatures follow]*

Agreed to this \_ day of \_\_\_\_\_, 20\_.

by [Customer Name]

\_\_\_\_\_  
By: \_\_\_\_\_ Its: \_\_\_\_\_

Heber Light & Power Company

\_\_\_\_\_  
By: \_\_\_\_\_