**Summary of Changes**

No edits from status quo are proposed to the Governing Law and Dispute Resolution provisions. BPA proposes a minor change to the “Option” pink text drafter’s note.

**Edits of Particular Note**

N/A

**22. GOVERNING LAW AND DISPUTE RESOLUTION*(03/21/2024 Version)***

*Option: Include for Tribal customers*«Customer Name» agrees that it will not assert as a defense to any claim by BPA hereunder, its sovereign immunity, and said immunity is hereby expressly waived for any obligations, liabilities, or duties owed by «Customer Name» to the Bonneville Power Administration, United States Department of Energy, under this Agreement.*End Tribal Option* This Agreement shall be interpreted consistent with and governed by federal law. «Customer Name» and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort shall include discussions or negotiations between the Parties’ executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this section 22, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

22.1 **Judicial Resolution*(07/21/09 Version)***

Final actions subject to section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and shall remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions include, but are not limited to, the establishment and the implementation of rates and rate methodologies. Any dispute regarding any rights or obligations of «Customer Name» or BPA under any rate or rate methodology, or BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. For purposes of this section 22, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from nonbinding arbitration under this section 22, then «Customer Name» may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 22.

22.2 **Arbitration**

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by section 22.1 above, shall be subject to arbitration, as set forth below.

«Customer Name» may request that BPA engage in binding arbitration to resolve any dispute. If «Customer Name» requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA’s Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this section 22.2 and sections 22.3 and 22.4 are met. BPA may request that «Customer Name» engage in binding arbitration to resolve any dispute. In response to BPA’s request, «Customer Name» may agree to binding arbitration of such dispute, provided that the remaining requirements of this section 22.2 and sections 22.3 and 22.4 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which shall set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA’s Binding Arbitration Policy or its successor.

Nonbinding arbitration shall be used to resolve any dispute arising out of this contract that is not excluded by section 22.1 above and is not resolved via binding arbitration, unless «Customer Name» notifies BPA that it does not wish to proceed with nonbinding arbitration.

22.3 **Arbitration Procedure**

Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration shall be agreed to by the Parties.

22.4 **Arbitration Remedies**

The payment of monies shall be the exclusive remedy available in any arbitration proceeding pursuant to this section 22. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

22.5 **Finality**

22.5.1 In binding arbitration, the arbitration award shall be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

22.5.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

22.6 **Arbitration Costs**

Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.