

## Termination and Settlement Agreement and Release of Claims

This Termination and Settlement Agreement **and Release of Claims** dated March 20, 2024 (this "**Agreement**") is made by and between the Incorporated County of Los Alamos, New Mexico ("**LAC**") a political subdivision and home-rule municipality and county organized under the laws of the State of New Mexico and Uniper Global Commodities North America LLC ("**UGCNA**") a limited liability company organized under the laws of Delaware. LAC and UGCNA are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, the Parties entered into that certain 15 MW Power and Renewable Energy Credit Sale Agreement dated January 28, 2020 (the "AGR20-926 PPA") (Power Purchase Agreement);

WHEREAS, the Parties entered into that certain 25 MW Power and Renewable Energy Credit Sale Agreement dated January 8, 2022 (the "AGR22-928 PPA");

WHEREAS, AGR20-926 PPA and AGR22-928 PPA may be jointly referred to as the ("**PPAs**");

WHEREAS, the Parties have mutually agreed to termination of AGR20-926 PPA and AGR22-928 PPA, under the terms set forth in this Agreement;

WHEREAS, the Parties have agreed that as consideration for the termination of the PPAs, UGCNA shall pay LAC an amount equal to **FIFTY-EIGHT MILLION DOLLARS AND ZERO CENTS (\$58,000,000.00)** ("**Termination Amount**");

WHEREAS, LAC and UGCNA have agreed to settle any existing and all potential obligations, liabilities, claims and disputes and differences between them by executing and performing this Agreement (the "**Claims**"); and

WHEREAS, the Parties recognize that by the execution and performance of this Agreement, they are relinquishing all their respective legal rights with respect to any Claims arising under or associated in any way with the PPAs.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereto agree as follows:

1. **Effective Date.** For LAC power scheduling purposes, UGCNA shall cease providing electrical power under the PPAs to LAC at military time 0000 hours (zero hundred hours), Pacific Prevailing Time, April 1, 2024. This Agreement is effective on April 1, 2024 ("**Effective Date**"), but the termination of the PPAs and release of waiver of claims by the Parties set forth in Sections 2 and 3 below ("**Termination and Waiver**") shall become effective only when LAC has received the Termination Amount.

2. **Termination of the PPAs.** The Parties mutually agree that both PPAs shall be terminated on the date of receipt by LAC of the Termination Amount (the "**Termination Date**"). Upon the Termination Date, the PPAs shall have no further force or effect. Any and all transactions completed by the Parties under the PPAs prior to the Termination Date shall remain in full force and effect and shall not be revoked or adversely effected as a result of the termination of the PPAs or this Agreement.

3. **Payment of Termination Damages.** UGCNA shall pay LAC the Termination Amount of **FIFTY-EIGHT MILLION DOLLARS AND ZERO CENTS (\$58,000,000.00)** as liquidated damages under the PPAs by electronic transfer (wire Automated Clearing House) of U.S. dollars prior to 4:00 p.m. Mountain Prevailing Time, on the first Business Day after the Effective Date, to the following:

Enterprise Bank and Trust  
Account Name: Los Alamos County  
Wire: # xxx  
Acct: # xxx

**4. Release and Discharge.** Upon receipt of the Termination Amount by LAC, for good, valuable and sufficient consideration, both Parties hereby release, cancel, and forever discharge the other Party and its affiliates, including but not limited to, their directors, officers, members, employees, subsidiaries, affiliates, agents, and representatives from any and all claims, complaints, causes of action, demands, damages, obligations, liabilities, losses, promises, agreements, controversies, penalties, expenses, and executions of any kind or nature whatsoever, whether known or unknown, actual or potential, whether arising in law or in equity, which they may have, may have had, or may in the future obtain, arising out of or relating out of the acts, omissions, agreements, or events relating in any manner to the termination of the PPAs and/or any Claims (the “**Release**”).

**5. Effect.** The Release is intended to be a general release in the broadest form relating to the termination of the PPAs and/or any Claims. It is understood and agreed that both Parties hereby expressly waive any and all laws and statutes, of all jurisdictions whatsoever, which may provide that a general release does not extend to claims not known or suspected to exist at the time of executing a release which if known would have materially affected the decision to give said release. It is expressly intended and agreed that the Release does, in fact, extend to such unknown and unsuspected claims related to the termination of the PPAs and/or any Claims, even if knowledge thereof would have materially affected the decision to give the Release. In addition, each Party warrants and represents to the other Party that the execution and delivery of the Release does not, and with the passage of time will not, violate any obligation of a Party to any third party. Each Party further represents and warrants that it has not assigned any of its rights relating to the topic of the Release to any other party. Any person or corporation, partnership or other entity which succeeds to a Party’s rights and responsibilities is also bound by the Release.

**6. Consideration.** Each Party acknowledges and agrees that it has received good, valuable and sufficient consideration for making this Agreement. Upon receipt of the Termination Amount by LAC, each Party acknowledges and agrees that it will not be entitled to and shall not assert any claim for any additional amount from the other Party related to the termination of the PPAs and/or any Claims, other than the payment specified in Section 3. Each Party agrees that it will not seek anything further, directly or indirectly, for itself or any person, corporation, partnership or other entity, including any other payment or consideration, with respect to the termination of the PPAs and/or any Claims and the claims released pursuant to this Agreement. LAC shall be solely responsible for all taxes and withholdings that may be owed to any federal, state, or local taxing authority as a result of the payment received under this Agreement.

**7. Representations and Warranties.** The Parties hereby represent and warrant[s] as follows:

(a) Organization; Authority; Valid and Binding Obligations. Each Party is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each Party has all requisite power, legal capacity and authority to enter into this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of each Party. Each Party shall duly execute and deliver this Agreement which will constitute the valid and binding obligations of each Party, enforceable against each Party in accordance with its terms.

(b) Consents and Approvals. No additional notification to, filing with, or consent or approval by, any person is required for or in connection with the execution and delivery by each Party of this Agreement.

(c) No Violation. Neither the execution and delivery by each Party of this Agreement nor the performance by each Party of the terms and conditions hereof or thereof will (i) result in a breach of the constituent documents of any Party, (ii) violate or constitute a default (or any event that, with or without due notice or lapse of time, or both, would constitute a default) under any contracts to which any Party is a party or by which any of a Party’s assets are bound or (iii) violate any law binding on or applicable to any Party.

**8. General Provisions.**

(a) Expenses. All costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement, shall be paid for by the Party incurring such costs and expenses.

(b) Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing in English and shall be deemed effective given (i) upon personal delivery to the party to be notified, (ii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iii) one day after deposit with a recognized overnight courier, specifying next day delivery, with written verification of receipt. Any notice or communication sent by post shall also be sent by email. All communications shall be sent to the respective parties at their addresses as set forth below:

If to LAC:

Utilities Manager  
Los Alamos County DPU  
1000 Central Ave.  
Los Alamos NM 87544

If to UGCNA:

Uniper Global Commodities North America LLC  
1201 Louisiana Street, Suite 650  
Houston, TX 77002  
Email: UGCNAlegal@uniper.energy

(c) Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

(d) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and thereof and supersedes all prior agreements and undertakings, both written and oral, among the Parties with respect to the subject matter hereof and thereof.

(e) Assignment. This Agreement may not be assigned by operation of law or otherwise without the express written consent of the Parties (which consent may be granted or withheld in the sole discretion of the Parties) and any such assignment or attempted assignment without such consent shall be void.

(f) Amendment. This Agreement may not be amended or modified except by an instrument in writing signed by all of the Parties.

(g) Waiver. The failure of any Party to assert any of his rights hereunder shall not constitute a waiver of any of such rights. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

(h) Successors and Assigns. This Agreement shall be binding upon and inure solely to the benefit of the Parties and their respective successors and permitted assigns.

(i) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New Mexico without giving effect to any choice or conflict of law provision or rule (whether of the State of New Mexico or any other jurisdiction). EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING ARISING FROM A DISPUTE UNDER THIS AGREEMENT.

(j) Anti-Bribery, Anti-Corruption, and Anti-Money Laundering. Each Party agrees and undertakes to the others that in connection with this Agreement, it will comply with all applicable laws, rules,

regulations, decrees and/or official government orders relating to anti-bribery, anti-corruption and anti-money laundering ("Applicable ABC Laws") and that it shall take no action which would subject the other Parties to fines or penalties under any such Applicable ABC Laws.

Each party represents, warrants and undertakes to the other Parties that it shall not, directly or indirectly, in connection with this Agreement pay, offer, give, receive, request, promise, authorize, attempt to give or receive or in any way facilitate, aid or abet the giving and/or receiving of any monies, or the transfer of any financial or other advantage or benefit, or other things of value to a government official or an officer or employee of a government or any department, agency or instrumentality of any government.

As between the parties, each party shall be solely responsible for any liability arising from their acts or failure to act for any claim that sounds in law or equity arising from or connected to a violation of any of the above representations, warranties or undertakings in this section. The liability of LAC shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq., N.M.S.A. 1978, and of any amendments thereto.

(k) Counterparts. This Agreement may be executed and delivered (including by facsimile or other electronic transmission) in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

(l) Further Assurances. Each of the Parties shall, from time to time at the request of the other Party, furnish the other Party such further information or assurances, execute and deliver such additional documents instruments and conveyances and take such other actions and do such other things, as may be necessary or desirable to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

(m) No Admission. LAC and UGCNA expressly agree and acknowledge that this Agreement represents the final settlement and compromise of the termination of the PPAs and/or any Claims, and that by entering into this Agreement neither Party hereto admits or acknowledges the existence of any liability, obligation, or wrongdoing on its part. Each Party expressly denies any and all liability or wrongdoing with respect to the termination of the PPAs and/or any Claims.

(n) Independent Legal Counsel. The Parties acknowledge that they have had enough opportunity to consult with independent legal counsel of their choosing regarding the legal effect of this Agreement and the Release and that each Party freely and voluntarily enters into this Agreement.

(o) Confidentiality. Unless required by applicable law, including the New Mexico Open Meetings Act and Inspection of Public Records Act, to disclose, the Parties agree to keep confidential all the terms and conditions of this Agreement, the existence of this Agreement, as well as all negotiations and discussions leading up to this Agreement. Notwithstanding anything contrary in this Section, the Parties may disclose all the terms and conditions of this Agreement and the existence of this Agreement to its affiliates.

(p) Construction. The headings/captions appearing in this Agreement have been inserted for the purposes of convenience and ready reference, and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the provisions to which they appertain. This Agreement shall not be construed more strongly against either Party regardless of which Party is more responsible for its preparation.

In witness whereof, the Parties hereto have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

\_\_\_\_\_  
**NAOMI D. MAESTAS**  
**COUNTY CLERK**

**BY:** \_\_\_\_\_ **DATE** \_\_\_\_\_  
**ANNE LAURENT**  
**COUNTY MANAGER**

**Approved as to form:**

\_\_\_\_\_  
**J. ALVIN LEAPHART**  
**COUNTY ATTORNEY**

**UNIPER GLOBAL COMMODITIES NORTH AMERICA,  
LLC**

**BY:** \_\_\_\_\_

**NAME** \_\_\_\_\_ **DATE** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**NAME** \_\_\_\_\_ **DATE** \_\_\_\_\_

**TITLE:** \_\_\_\_\_